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**THE LAW**  
**OF**  
**NEGOTIABLE**  
**INSTRUMENTS**

**INCLUDING**  
**PROMISSORY NOTES, BILLS OF EXCHANGE, BANK**  
**CHECKS AND OTHER COMMERCIAL PAPER**

**WITH**  
**THE NEGOTIABLE INSTRUMENTS**  
**LAW ANNOTATED**

**AND**  
**FORMS OF PLEADING, TRIAL EVIDENCE AND COM-**  
**PARATIVE TABLES ARRANGED ALPHABETICALLY**  
**BY STATES**

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**BY**  
**JAMES MATLOCK OGDEN, LL.B., HARVARD**  
**OF THE INDIANAPOLIS BAR**

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**SECOND EDITION**

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**CHICAGO**  
**CALLAGHAN & COMPANY**  
**1922**

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## PREFACE TO FIRST EDITION

The importance of the Law of Negotiable Instruments, or the Law of Bills, Notes and Checks, will be realized when it is considered that over ninety per cent. of the work of paying for and effecting the exchange of interstate commerce is carried on today by means of commercial paper.

It has been the endeavor of the author to furnish the practitioner and the student of the law such a practical presentation of the elementary principles of negotiable instruments as may serve, with the aid of its references to judicial decision, as a complete and convenient guide in this important subject of the law.

The law herein set out is the law settled by the authorities rather than the writer's own views. The object has been to enable one readily to find the law of bills, notes and checks in any state or territory in the United States. The peculiarities of the law in those states which have adopted the Negotiable Instruments Law are set forth and all modifications are pointed out. The peculiarities of the law in those states which have not adopted the Negotiable Instruments Law are collected and arranged alphabetically by states.

Thus the writer has endeavored to cover the entire field of the law of negotiable instruments, citing cases from every jurisdiction.

In the text discussing the elementary principles, the Negotiable Instruments Law is interwoven, distinguished by being printed in italics; the text of the law as printed is that of the New York Act. A table, however, is inserted to facilitate the finding of parallel sections of the acts or laws enacted by all other jurisdictions. All decisions construing the Negotiable Instruments Law since its adoption by the first state up to July 1st of the present year are cited; also all decisions of the English law courts which affect corresponding provisions of the Bills of Exchange Act of 1882.

That part of the text relating to the Negotiable Instruments Law will be found valuable in those jurisdictions which have not adopted that law, since most of its concise statements of rules are of application in all jurisdictions, whether the law has been adopted or not.

With the hope that herein the principles of negotiable instruments, have been made clearer, the writer submits this work and asks indulgence for any oversights.

JAMES MATLOCK OGDEN.

Indianapolis, Indiana, August 25, 1909,



## PREFACE TO SECOND EDITION

More than twelve years have passed since the last edition of this book was printed, although in the meantime there have been a number of reprints. The writer takes this opportunity to show his appreciation for the wonderful cordiality the other edition received and for the many requests for a revised edition.

In 1909, at the time the other edition was published, the Negotiable Instruments Law had been adopted in thirty-eight states and territories while now it has been adopted in all jurisdictions of the United States except Georgia and Porto Rico, making a total of fifty-one of our jurisdictions.

The writer showed his confidence in the ultimate adoption of the Negotiable Instruments Law in all jurisdictions of the United States by making the Law a part of the text and placing it in italics. This helpful plan has been continued in this edition.

Since 1909 there have been some new phases of the law of negotiable instruments which have come to the front, such as trade acceptances, traveler's checks, liberty bonds and certain cases of illegality. These have all been added to the text and treated under the proper heading. Chapters have also been added on collateral security, on parties to suits, lost and destroyed negotiable instruments and sections have been added in various chapters throughout the book.

Many citations have been added to the text and an endeavor has been made to bring the citations as to the Negotiable Instruments Law down to date, particularly in Part III.

The text of this book is confined to negotiable instruments. Like the Negotiable Instruments Law no attempt has been made in it to deal with instruments which are non-negotiable as they are not governed by the Law.

The writer trusts that the treatise may continue to be helpful to the student and the practitioner.

JAMES MATLOCK OGDEN.

Indianapolis, Indiana, April 1, 1922.





# • TABLE OF CONTENTS

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## PART I

### ELEMENTARY PRINCIPLES—BILLS, NOTES AND CHECKS.

---

#### CHAPTER I.

##### GENERAL CHARACTERISTICS AND GENERAL FORM OF BILLS, NOTES AND CHECKS.

SECTION.	PAGE.
1. Introductory .....	1
2. Form of Promissory Note.....	1
3. General Characteristics of Promissory Note.....	2
3a. Other Clauses Added in Different Jurisdictions.....	5
4. Form of Bill of Exchange.....	11
5. General Characteristics of Bill of Exchange.....	11
6. Form of Check .....	11
7. General Characteristics of Check.....	11
7a. Origin and Development of Negotiable Instruments.....	11

#### CHAPTER II.

##### LAW MERCHANT.

8. Meaning Term .....	13
9. Origin .....	14
10. Origin of Bill of Exchange under Law Merchant.....	15
11. Origin of Promissory Note under Law Merchant.....	15
12. Law Merchant Codified .....	15

#### CHAPTER III.

##### NEGOTIABILITY.

13. Meaning of Term .....	17
14. Origin of Negotiability .....	18
15. Distinction Between Assignability and Negotiability.....	18
16. Purpose of Negotiability .....	20
17. Payment by Negotiable Instrument .....	20

## CHAPTER IV.

## GENERAL DOCTRINE.

SECTION.	PAGE.
18. Negotiable Instruments Similar to Money.....	22
19. Bona Fide Holder .....	22
20. Equities .....	23
21. Circulation when Parties not Immediate.....	25

## CHAPTER V.

## PARTIES AND THEIR CAPACITY.

22. Parties and Their Capacity—In General.....	27
23. Parties Partially or Wholly Incapacitated—In General.....	28
24. Same—Persons Lacking Mental Capacity—Infants.....	28
25. Same—Persons Lacking Mental Capacity—Lunatics and Imbeciles .....	30
26. Same—Persons Lacking Mental Capacity—Drunkards and Spendthrifts .....	31
27. Same—Persons Lacking Legal Capacity Other than Mental—Married Women .....	32
28. Same—Persons Lacking Legal Capacity Other than Mental—The Bankrupt or Insolvent Payee.....	33
29. Same—Persons Lacking Legal Capacity Other than Mental—Alien Enemies .....	33
30. Parties Not Incapacitated—In General.....	33
31. Same—Persons Acting in Fiduciary Capacity—Executors and Administrators .....	34
32. Same—Persons Acting in Fiduciary Capacity—Trustees and Guardians .....	35
33. Same—Persons Acting in Representative Capacity—Agent.....	35
34. Same—Persons Acting in Representative Capacity—Partners.....	38
35. Same—Persons Acting in Representative Capacity—Private Corporations .....	40
36. Same—Persons Acting in Representative Capacity—Municipal or Public Corporations .....	41
37. Same—Persons Acting in Representative Capacity—Public Officers .....	42

## CHAPTER VI.

## FORMAL AND ESSENTIAL REQUISITES.

38. Definition of Promissory Note .....	43
39. Definition of Bill of Exchange.....	43
40. Formal and Essential Requisites in General.....	44
41. Must be in Writing .....	45
42. As to Style and Material.....	46
43. The Date .....	46
44. The Signature .....	47
45. Must be Promise or Order to Pay.....	49
46. Must be Payable to Order or Bearer.....	50
47. Must be Certain as to Promise or Order to Pay.....	51

## TABLE OF CONTENTS.

ix

SECTION.	PAGE.
48. Must be Certain as to Amount.....	52
49. Must be Certain as to Time of Payment.....	54
50. As to Place of Payment.....	55
51. Must be Payable in Money.....	56
52. Must be Necessary Parties .....	60
53. The Delivery.....	61
54. Value Received.....	64
55. As to Agreements Controlling the Operation.....	64
56. Days of Grace .....	66
56a. As to Payable at a Bank.....	66
57. As to Stamps .....	67
58. As to Blanks .....	67
59. As to Instruments Bearing a Seal.....	68
60. The Several Parts of a Foreign Bill Called a Set.....	69

## CHAPTER VII.

### CONSIDERATION OF NEGOTIABLE INSTRUMENTS.

61. Meaning of Term .....	72
62. Consideration in General .....	72
63. Necessity of Consideration .....	77
64. Presumption of Consideration .....	78
65. Sufficiency of Consideration .....	79
66. Inadequacy of Consideration .....	79
67. Illegal, Immoral, and Fraudulent Considerations.....	80
68. Want or Failure of Consideration.....	81
69. Between Whom Questions of Consideration May Be Raised.....	82
70. As to Accommodation Paper .....	83

## CHAPTER VIII.

### SUBDIVISION A—ACCEPTANCE OF BILLS.

71. Meaning of Term.....	85
72. Object of Acceptance.....	86
73. Form of Acceptance .....	87
74. Nature and Effect of Acceptance.....	89
75. According to Tenor of Bill.....	90
76. Delivery .....	91
77. Acceptance of Incomplete Bill .....	91
78. Varieties of Acceptance—In General.....	91
79. Varieties of Acceptance—As to Terms—General Acceptance.....	92
80. Varieties of Acceptance—As to Terms—Qualified Acceptance.....	92
81. Varieties of Acceptance—As to Form—In General.....	92
82. Varieties of Acceptance—As to Form—Written.....	93
83. Varieties of Acceptance—As to Form—Parol.....	95
84. Varieties of Acceptance—As to Mode of Proof—Express.....	96
85. Varieties of Acceptance—As to Mode Proof—Implied.....	96
86. Acceptance of Bills Drawn in Sets.....	97
87. Revocation of Acceptance .....	97
88. What Bills Must be Presented for Acceptance.....	97
89. By and to Whom Presentment Should be Made.....	98

## TABLE OF CONTENTS.

SECTION.	PAGE.
90. Time of Presentment .....	99
91. Place of Presentment .....	100
92. Presentment Excused .....	100
93. Acceptance for Honor, or Supra Protest.....	101

## SUBDIVISION B—TRADE ACCEPTANCES.

93a. Meaning of Term .....	104
93b. Trade Acceptances Distinguished from Ordinary Bill of Exchange .....	104
93c. Trade Acceptances Distinguished from Promissory Note.....	105
93d. Nature of Transaction in which Trade Acceptance Used.....	105
93e. Where Payable .....	105
93f. By Whom Presented for Discount .....	105
93g. Inducements by Federal Reserve System.....	106
93h. Effect on Other Negotiable Instruments.....	106
93i. Origin .....	106
93j. Extent of Use .....	107
93k. Decisions .....	107

## CHAPTER IX.

## NEGOTIATION—BY INDORSEMENT.

94. Meaning of Term Negotiation .....	108
95. Who May Negotiate .....	109
96. Methods of Transfer .....	109
97. Meaning of Indorsement .....	110
98. Who Indorse .....	112
99. Nature of Indorsement .....	113
100. Requisite of Indorsement.....	114
101. Varieties of Indorsement.....	115
102. Indorsement in Full or Special Indorsement.....	116
103. Indorsement in Blank.....	117
104. Absolute and Conditional Indorsements.....	117
105. Restrictive Indorsement .....	119
106. Indorsement Without Recourse.....	121
107. Joint Indorsement.....	122
108. Successive Indorsements .....	123
109. Irregular or Anomalous Indorsement.....	123
110. Presumptions as to Indorsement.....	125
110a. Effect of Transfer without Necessary Indorsement.....	126
110b. Indorsement Stricken Out.....	126
110c. Negotiable Character Continued.....	127
110d. Negotiation by Prior Party.....	127

## CHAPTER X.

## TRANSFER—BY DELIVERY AND BY OPERATION OF LAW.

111. In General.....	128
112. By Delivery.....	128
113. By Operation of Law.....	130

## TABLE OF CONTENTS.

xi

### CHAPTER XI.

#### TRANSFER—BY ASSIGNMENT.

SECTION.	PAGE.
114. Assignment in General.....	131
115. Assignment by a Separate Writing.....	132
116. Liability of Assignor of Bills and Notes.....	133
117. Rights of Parties.....	134
118. Transfer by Legal Process.....	135
118a. Some Differences as to Liability of Different Transferrers.....	136
118b. Several Indorsements in Blank, also Combination of in Blank and Special Indorsements.....	137

### CHAPTER XII.

#### OF THE NATURE OF THE LIABILITIES OF THE PARTIES.

119. In General.....	139
120. Maker .....	139
121. Drawer .....	140
122. Acceptor .....	141
123. Indorser .....	142
124. Accommodation and Accommodated Parties.....	144
125. Agent .....	148

### CHAPTER XIII.

#### NATURE AND RIGHTS OF A BONA FIDE HOLDER OR A PURCHASER FOR VALUE WITHOUT NOTICE.

126. Bona Fide Holder for Value Without Notice—In General....	149
127. Good Faith or Bona Fide.....	150
128. Holder for Value.....	150
129. Holder Without Notice.....	153

### CHAPTER XIV.

#### REAL OR ABSOLUTE DEFENSES.

130. Defenses in General.....	158
131. Real Defenses—In General.....	160
132. Incapacity to Contract—Infancy.....	160
133. Incapacity to Contract—Coverture.....	162
134. Incapacity to Contract—Where Corporation Prohibited.....	162
135. Incapacity to Contract—Insanity.....	163
136. Incapacity to Contract—Drunkenness.....	163
137. Illegality of Contract—Gaming, Usurious and Sunday Notes..	164
138. Forgery .....	169
139. Duress When Amounting to Forgery.....	170
140. Statute of Limitations.....	171
141. Failure to Stamp.....	171

## CHAPTER XV.

## PERSONAL DEFENSES OR EQUITIES.

SECTION.	PAGE.
142. In General.....	173
143. Fraud .....	175
144. Alteration .....	176
145. Duress .....	178
146. Want or Defect of Consideration.....	179
147. Illegality of Consideration.....	180
148. Payment .....	182

## CHAPTER XVI.

## PRESENTMENT, NOTICE OF DISHONOR AND PROTEST.

149. Meaning of Terms.....	183
150. In General.....	184
151. Presentment for Acceptance—When Essential.....	185
152. Presentment for Acceptance—Benefit.....	185
153. Presentment for Acceptance—Time.....	185
154. When Instrument Dishonored by Non-Acceptance.....	186
155. Presentment for Payment—In General.....	187
156. Presentment for Payment—When Essential.....	188
157. Presentment for Payment—When Dispensed With.....	189
158. Presentment for Payment—What Sufficient.....	189
159. Presentment for Payment—Date .....	190
160. Presentment for Payment—When Delay Excused.....	191
161. Presentment for Payment—Place .....	192
162. Presentment for Payment—To Whom.....	193
163. Presentment for Payment—Effect of Failure to Present.....	193
164. When Instrument Dishonored by Non-Payment.....	194
165. Notice of Dishonor—In General.....	194
166. Notice of Dishonor—Contents .....	194
167. Notice of Dishonor—By Whom Given and When to be Given.....	195
168. Notice of Dishonor—To Whom Given.....	196
169. Notice of Dishonor—Time .....	198
170. Notice of Dishonor—Place of Sending.....	199
171. Notice of Dishonor—Notice through Postoffice.....	200
172. Notice of Dishonor—When Notice Unnecessary.....	200
173. Notice of Dishonor—Excuse for Failure.....	201
174. Notice of Dishonor—Effect of Notice as to Prior and Subse- quent Parties .....	203
175. Protest—Method of.....	204
176. Protest—Purpose .....	207
177. Protest—Notice .....	208
178. Protest—What Should be Protested and What Not Necessary.....	210
179. Protest—Waiver .....	211
180. Protest—Miscellaneous Matters.....	211

## CHAPTER XVII.

## DISCHARGE OF NEGOTIABLE INSTRUMENTS.

181. In General.....	214
182. By Payment.....	215

## TABLE OF CONTENTS.

xiii

SECTION.	PAGE.
183. By Payment for Honor.....	219
184. By Cancellation and Surrender.....	220
185. By Covenant Not to Sue.....	221
186. By Accord and Satisfaction.....	221
187. By Substitution of Another Obligation.....	222
188. By Alteration.....	223
189. By the Principal Debtor Becoming the Holder in Due Course.....	223
190. By Operation of Law.....	224
191. By Renunciation of Holder.....	225
192. When a Person Secondly Liable, Discharged.....	225

## CHAPTER XVIII.

### CONFLICT OF LAWS, OR WHAT LAW GOVERNS.

193. In General.....	227
194. As to Validity, Interpretation and Effect.....	228
194a. As to Capacity and Effect.....	229
195. As to Liability of Maker, Drawer and Acceptor.....	230
196. As to Payment, Interest and Damages.....	230
197. As to Liability of Indorsers.....	231
198. As to Presentment, Protest and Notice.....	232
199. Rule in Federal Courts.....	232
199a. Damages upon Dishonor of Foreign Bill.....	233
199b. Date at Which Rate of Exchange Should be Applied.....	233

## CHAPTER XIX.

### SUBDIVISION A—CHECKS.

200. Check Defined and Distinguished from Bill of Exchange.....	234
201. The Formalities of a Check.....	236
202. Presentment of a Check for Payment.....	236
203. Certification of Check.....	238
204. Forgery and Alteration of Check.....	241
205. Memorandum Check.....	242
206. Stale Check.....	243
206a. Cashier's Check.....	243
206b. Paid or Cancelled Check.....	244
206c. Crossed Check.....	244
206d. Fraudulent Check.....	244
206e. Stolen Checks or Stolen Negotiable Securities.....	245
206f. Check as Payment.....	246
206g. Stopping Payment.....	246
207. Checkholder's Right to Sue the Bank.....	248
208. The Depositor's Right to Draw on the Bank.....	249
209. Failure of Bank to Honor Check.....	250

### SUBDIVISION B—TRAVELERS' CHECKS.

209a. Meaning of Term and Object.....	251
209b. Provisions.....	251
209c. Rights and Liabilities.....	252
209d. Advantages.....	252
209e. Forgery of Travelers' Checks.....	252



## TABLE OF CONTENTS.

## CHAPTER XIX—A.

## LOST AND DESTROYED NEGOTIABLE INSTRUMENTS.

SECTION.	PAGE.
209f. In General.....	253
209g. Diligence of Owner.....	253
209h. No Title in Finder.....	253
209i. When Party Liable not Discharged.....	254
209j. Rule as to Indemnity.....	254
209k. Form of Bond of Indemnity for Paying Lost Note.....	254
209l. Copy Admissible in Evidence.....	255
209m. Burden of Proof.....	256
209n. Suit at Law or in Equity.....	256
209o. Demand, Protest and Notice as to Lost Instrument.....	257

## CHAPTER XX.

## SOME OTHER KINDS OF COMMERCIAL PAPER.

210. In General.....	258
211. Bill of Lading.....	258
212. Certificate of Deposit.....	260
213. Certificate of Stock.....	261
214. Coupon Bonds.....	262
214a. Liberty Bonds.....	263
215. Draft.....	264
216. Due Bill.....	264
217. Letters of Credit.....	265
218. Paper Money.....	265
219. Warehouse Receipt.....	266
219a. Miscellaneous.....	266

## CHAPTER XXI.

## SURETYSHIP AND GUARANTY.

220. Terms Defined and Distinguished.....	267
220a. Who are Principals and Who Sureties.....	269
221. Consideration as to Guaranties.....	269
222. Guaranty as Affected by Statute of Frauds.....	270
222a. Conditional Guaranties.....	271
223. Negotiability of Guaranties.....	271
224. Notice to Guarantor of Default of Principal When Demand is Made.....	272
225. Liability of Concealed Sureties on Accommodation Paper.....	272
226. Remedies of Guarantors.....	273
226a. Limit of Surety's Recovery.....	273
226b. Trial of Suretyship.....	273
227. Discharge of Guarantors and Sureties.....	274
227a. Contribution Between Sureties.....	276

# TABLE OF CONTENTS.

xv

## CHAPTER XXI—A.

### NEGOTIABLE INSTRUMENTS WITH COLLATERAL SECURITY.

SECTION.	PAGE.
227b. Meaning of Term Collateral Security.....	278
227c. Form of Promissory Note with Collateral Security.....	280
227d. Holder of Collateral Security a Holder for Value—When Transfer is for Debt Created at Time of Transfer.....	281
227e. Holder of Collateral Security a Holder for Value—When Transfer is for a Pre-existing Debt.....	281
227f. Holder of Collateral Security a Holder for Value—When Transfer is as Collateral for a Debt Not Yet Due.....	281
227g. Presumption as to Ownership.....	282
227h. Whether or Not Note Secured by Collateral is Negotiable.....	282
227i. Whether or Not Collateral Note or Bill is Negotiable.....	283
227j. Effect of Agreement for Delay.....	284
227k. Provision for Deposit of Additional Collateral.....	285
227l. Proviso in Note Authorizing Sale of Collaterals.....	285
227m. What Amounts to Payment.....	285
227n. In Some Jurisdictions by Statute, the Surrender of Collateral Discharges Indorser.....	286
227o. Holder Receiving Collateral not Required to Proceed upon Same Before Suing Indorser.....	286
227p. Collateral Security Must Be Exhibited.....	286
227q. Right of Maker to Claim a Defense Because Holder has Collateral Security.....	286
227r. Amount of Recovery on Collateral Security.....	287
227s. Rights of Indorsee as to Stipulations in Collateral Note.....	287
227t. Whether Surrender of Collateral Discharges Surety.....	287
227u. Whether Surrender of Collateral Discharges Guarantor.....	287
227v. Effect upon Necessity of Presentment, Protest, and Notice as to Drawer or Indorser When They are in Possession of Security.....	288
227w. Accommodation Paper as Collateral Security.....	289
227x. Collateral Released or Lost.....	289
227y. Miscellaneous.....	289
227z. Form of Guaranty of Collateral Note.....	291
227aa. Form of Note with Transfer of Account.....	291

## CHAPTER XXI—B.

### WHO MAY SUE—WHO MAY BE SUED.

227bb. In General.....	292
227cc. Party in Interest.....	292
227dd. Holder May Sue When Another is Entitled to Proceeds.....	293
227ee. Instruments Payable to Bearer or Indorsed in Blank.....	294
227ff. Acceptor.....	295
227gg. Drawee.....	295
227hh. Payee.....	295
227ii. Drawer.....	295
227jj. Agent.....	296
227kk. Public Officials.....	297

SECTION.	PAGE.
227il. Holder of Instrument for Collection.....	297
227mm. Who May Sue—Miscellaneous.....	298
227nn. Parties to Actions—Defendants.....	300

## PART II

### PLEADINGS, EVIDENCE AND TRIAL PROCEDURE AS TO BILLS, NOTES AND CHECKS.

#### CHAPTER XXII.

##### PLEADINGS—IN GENERAL.

228. Meaning of Term.....	303
229. Classes and Order of Pleadings.....	303
230. The Complaint or Declaration.....	304
231. Pleadings After Complaint or Declaration.....	304

#### CHAPTER XXIII.

##### FORMS OF COMMON LAW PLEADING.

232. Forms of Common Law Pleading—In General.....	306
---	-----

##### DECLARATIONS—NOTE, BILL AND CHECK.

233. Payee Against Maker.....	306
234. Indorsee Against Maker.....	307
235. Indorsee Against Payee or Other Indorsers.....	307
236. Declaration on Bill of Exchange by Drawer Against Acceptor.....	308
237. Payee Against Drawer for Non-Acceptance.....	308
238. Indorsee Against Indorser for Non-Acceptance.....	309

##### ANSWERS—NOTE, BILL AND CHECK.

239. Plea.....	309
240. Plea and Affidavit of Merits.....	310
241. Affidavit Denying Execution of Instrument.....	310
242. Plea of Payment by Services.....	310
243. Averment of Set-off.....	311
244. Statute of Limitations.....	311
245. Averment of Arbitration and Award.....	311

#### CHAPTER XXIV.

##### FORMS OF CODE PLEADING.

246. Forms of Code Pleading—In General.....	313
---	-----

# TABLE OF CONTENTS.

xvii

## COMPLAINTS—PROMISSORY NOTE.

SECTION.	PAGE.
247. Complaint on Promissory Note by Payee Against Maker.....	313
248. Same—For Interest Due.....	314
249. Same—Note Providing for Attorney's Fee.....	314
250. Same—Whole Amount Due on Failure to Pay Part.....	314
251. Same—Payable After Sight, Demand or Notice.....	315
252. Same—Excuse for Not Setting Out Copy of Note.....	315
253. Same—Lost Note.....	315
254. Complaint on Promissory Note by Executor of Payee Against Maker .....	316
255. Complaint on Promissory Note—Indorsee Against Maker....	316
256. Same—Assignee by Delivery Against Maker and Assignor....	316
257. Same—Indorsee Against Maker and Indorsers.....	317
258. Same—Indorsee Against Indorser—Payable in Another State— Negotiable by Foreign Statute.....	317

## COMPLAINTS—BILLS OF EXCHANGE.

259. Complaint on Bill of Exchange—Payee Against Drawer on Non-Acceptance .....	318
260. Same—Payee Against Acceptor on Non-Payment.....	318
261. Same—Drawer Against Acceptor on Non-Payment.....	319
262. Same—Indorsee Against Drawer on Non-Acceptance.....	319
263. Same—Indorsee Against Acceptor on Non-Payment.....	320
264. Same—Indorsee Against Acceptor—Payable at Particular Place	320
265. Same—Indorsee Against Drawer—Indorsers and Acceptor on Inland Bill of Exchange.....	320
266. Same—Indorsee Against Drawer When Payable at a Certain Place .....	321
267. Same—Indorsee Against Drawer—No Funds in Drawer's Hands —Failure to Notify Drawer.....	321
268. Same—Indorsee Against Drawer—Excuse for Non-Presentment —No Effects.....	322
269. Same—Indorsee Against Drawer—Demand and Notice Waived.	322
270. Same—Indorsee Against Indorser—Non-Payment by Acceptor..	323

## COMPLAINTS—BANK CHECK.

271. Complaint on Bank Check—Payee Against Drawer.....	323
272. Same—Payee Against Drawee.....	324
273. Same—Drawer Against Drawee.....	324
274. Same—Indorsee Against Indorsor.....	324

## ANSWERS—NOTE, BILL AND CHECK.

275. Answer to Complaint on Promissory Note, Bill of Exchange or Check—General Denial.....	325
276. Same—Denial of Execution of Instrument.....	325
277. Same—Want of Consideration.....	325
278. Same—Partial Want of Consideration.....	325
279. Same—Without Consideration as to Indorsee.....	325
280. Same—Illegal Consideration.....	326
281. Same—Failure of Consideration.....	326
282. Same—False Representations.....	327

## TABLE OF CONTENTS.

SECTION.	PAGE.
283. Same—Payment .....	327
284. Same—Alteration .....	327
285. Same—That Acceptance was for Accommodation.....	328

## CHAPTER XXV.

## EVIDENCE—IN GENERAL.

286. In General.....	329
287. Presumptions in General.....	329
288. Burden of Proof in General.....	330
289. Competency of Parties to Negotiable Instruments as Witnesses	330
290. Declarations and Admissions.....	331

## CHAPTER XXVI.

## EVIDENCE AS TO PARTICULAR CHARACTERISTICS.

291. As to Time .....	332
292. As to the Date.....	333
293. As to Amount Payable.....	334
294. As to Place of Payment.....	335
295. As to Mode of Payment.....	335
296. As to Interest.....	336
297. As to Consideration.....	336
298. As to Parties.....	337
299. As to Ambiguous or Omitted Stipulations.....	338
300. As to Execution and Delivery.....	339
301. As to Acceptance of Bills.....	339
302. As to Transfer.....	340
303. As to Conditions.....	341
304. As to Mistake.....	342
305. As to Fraud and Duress.....	342
306. As to Usury.....	343
307. As to Payment and Discharge.....	343
308. As to Presentment and Demand.....	343
309. As to Protest and Notice.....	344
310. Bills and Notes as Evidences.....	344
311. As to Meaning of Certain Terms.....	345

## CHAPTER XXVII.

## TRIAL PROCEDURE ON BILL, NOTE OR CHECK.

312. Essentials of Procedure.....	346
313. Common Law Procedure.....	347
314. Code Procedure.....	347
315. Steps in a Jury Trial.....	347
316. Impaneling the Jury.....	347
317. Opening Statements .....	348
318. Evidence of Plaintiff.....	348
319. Evidence of Defendant.....	351
320. The Argument .....	352
321. The Charge, Verdict and Judgment.....	352

## PART III

### THE NEGOTIABLE INSTRUMENTS LAW ANNOTATED.

	PAGES
Introduction .....	353-357
List of States and Territories where Negotiable Instruments Law Enacted .....	358-359
Table Showing the Corresponding Sections of the Statutes as Adopted in the Different States and Territories.....	360-367
The Negotiable Instruments Law.....	368-706

ARTICLE	PAGE
I. Form and Interpretation of Negotiable Instruments.....	369-426
II. Consideration .....	427-454
III. Negotiation .....	455-480
IV. Rights of Holder.....	481-537
V. Liabilities of Parties.....	538-562
VI. Presentment for Payment.....	563-585
VII. Notice of Dishonor.....	586-614
VIII. Discharge of Negotiable Instruments.....	615-639
IX. Bills of Exchange—Form and Interpretation.....	640-645
X. Acceptance of Bills of Exchange.....	646-656
XI. Presentment for Acceptance.....	657-661
XII. Protest .....	662-666
XIII. Acceptance for Honor.....	667-670
XIV. Payment for Honor.....	671-672
XV. Bills in a Set.....	673-675
XVI. Promissory Notes and Checks.....	676-691
XVII. General Provisions .....	692-704
XVIII. Notes Given for a Patent Right and for a Speculative Consideration .....	705-706

#### APPENDIX A.

Tabulated Laws of the States and Territories.....	707-713
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#### APPENDIX B.

Digest of Law in Georgia Where Negotiable Instruments Law Not Adopted .....	714-718
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# PART I

## NEGOTIABLE INSTRUMENTS

### CHAPTER I.

#### GENERAL CHARACTERISTICS AND GENERAL FORM OF BILLS, NOTES AND CHECKS.

- |   |   |
|---|---|
| § 1. Introductory.                                  | § 5. General characteristics of bill of exchange.     |
| 2. Form of promissory note.                         | 6. Form of check.                                     |
| 3. General characteristics of promissory note.      | 7. General characteristics of check.                  |
| 3a. Other clauses added in different jurisdictions. | 7a. Origin and development of negotiable instruments. |
| 4. Form of bill of exchange.                        |   |

**§ 1. Introductory.** The most common forms of commercial paper used today in commercial transactions are promissory notes, bills of exchange and bank checks. At present these constitute the medium of exchange for about ninety per cent of all commercial transactions. In this treatise these three instruments will be considered and it is essential in the beginning that a clear idea should be had in a general way of the characteristics and form of such instruments.

**§ 2. Form of promissory note.** The following is a simple form of a promissory note:

**\$200.00**

*New York City, New York,  
December 1, 1921.*

*Six months\_\_\_\_\_after date I\_\_\_\_\_*  
*promise to pay to the order of William Redding\_\_\_\_\_*  
*Two Hundred \_\_\_\_\_ Dollars*  
*at the First National Bank.*  
*Value received.*

*No. \_\_\_\_\_ Due \_\_\_\_\_* **JOHN MORRIS.**



The following is a form of a promissory note which is common in some jurisdictions :

**\$200.00      Indianapolis, Ind., December 1, 1921.**

**Six months-----after date I promise  
to pay to the order of William Redding-----  
at The Eagle National Bank, of Indianapolis, Ind.,  
Two Hundred ----- Dollars**

With five per cent Attorney's fees, upon the principal of this note. Value received, without any relief whatever from Valuation or Appraisal laws of the State of Indiana. With interest at the rate of eight per cent per annum after maturity until paid. The drawers and endorsers severally waive presentment for payment, protest, notice of protest, and notice of non-payment of this note.

**JOHN MORRIS.**

§ 3. General characteristics of promissory note. Let us examine the parts of the above instrument in a general way, commencing with the upper left corner of the instrument. (a) We note first the figures, "\$200.00." This is to indicate the amount of the note and being in figures is more quickly grasped than if in writing. If there is a conflict between the figures and the writing below on the instrument, the writing will control. (b) The place, "Indianapolis, Ind.," shows the place where this contract to pay is entered into, and as the laws of the various states differ as to the requisites of such a contract and as to the enforcement of the same it is generally essential that the place of entering into the agreement should be set out so that it may be clear just what law governs as to the contract or instrument. (c) The date, "December 1, 1921," is likewise essential so as to determine when the note is due and from what time interest is to be charged and whether or not the collection of the instrument is barred by the statute of limitations. (d) The time, "Six months after date," indicates the period of time for which the instrument is to run or indicates when the promise on the instrument should be fulfilled. (e) The promise, "I promise to pay," is an absolute promise to do something, that is, to pay; it does not read, if so and so happens or does not happen I promise to pay, but it is connected with no conditions of any nature.<sup>1</sup> (f) The words "to

<sup>1</sup> Grinnison v. Russell, 14 Neb. 521, 16 N. W. 819, 14 Am. Rep. 126; Iron City Nat. Bank v. McCord, 139 Pa. St. 52, 21 Atl. 143, 23

Am. St. Rep. 166, 11 L. R. A. 559; Neg. Inst. Law, §§ 1 and 4; Bills Exch. Act, § 3.

the order of," signify a promise to pay it to the order of any who may be designated. We shall consider in a subsequent chapter whether such words are absolutely necessary and whether they should always be in the form indicated. (g) The name, "William Redding," is the person to whose order something is to be paid and he is known as the payee. (h) Then follow these words, "at the Eagle National Bank of Indianapolis, Indiana," indicating where the note is to be paid; however, it may be paid at any other place agreed upon by the interested parties. (i) The amount "Two Hundred Dollars," indicates, as the figures did, the sum promised to be paid. The same being in writing cannot be so easily altered and since it takes longer to write the words than the figures the words are more likely to be accurate. (j) The phrase, "with five per cent Attorney's Fees," indicates that if William Redding, the payee, or any one to whose order he should make it payable, shall find it necessary to employ an attorney to collect the amount, five per cent additional will be paid by the party to the instrument who makes it necessary that an attorney should be employed. (k) The words "value received," indicate that a consideration was given for the note but most jurisdictions hold that these words are not necessary since a consideration is presumed. (l) The phrase, "without any relief whatever from Valuation or Appraisement Laws," shows that if the note is not paid when it should be and suit is brought and judgment recovered, then the one against whom judgment has been recovered waives any rights that he may have as to requiring that the property taken to satisfy the judgment, shall be valued or appraised by persons appointed for that purpose, and the property taken may be sold at any price. Thus the delay for a valuation and appraisement is avoided. (m) The words, "with interest at the rate of eight per cent per annum after maturity until paid," show what interest is to be paid by the maker in addition to the two hundred dollars if not paid when due. This interest will be calculated from June 1, 1922, the date of maturity, up to the time the note is paid. The per cent set out is eight per cent and we shall see in a later part of this work that different states have different laws governing the rate of interest which may be charged. (n) By the words "the drawers and endorsers severally waive presentment for payment, protest and notice of protest and non-payment of this note" is meant that the drawers (or persons who make the note) and the endorsers (or persons through whose hands the note passes and who write their names on the back of it) waive any rights that they may be entitled to because the instru-

ment when due was not properly presented for payment and the proper notice was not given to other parties who should have notice of the non-payment and other facts in connection therewith.

Thus if such rights were not waived and William Redding should indorse the note, that is, write on the back of the note an order that it be paid to John Graham and John Graham in turn should indorse it, that is, order it to be paid to James Spencer, and on June 1, 1922, when the note became due John Morris, the maker, refused to pay James Spencer, the holder, then, in order for James Spencer to recover from John Graham on the note it would be necessary for him to present the note to John Morris for payment and then notify John Graham of the refusal of John Morris to pay and notify him that he, James Spencer, expected to look to him for the payment of the note. In other words it would be necessary to present the note to John Morris for payment unless the indorsers waived presentment for payment and it would be necessary to notify the indorsers of the non-payment unless notice of non-payment of the note was waived. The contract of John Graham is that he will pay the note provided it is presented to the maker, John Morris, and in case John Morris does not pay it and he, John Graham, is notified of that fact, then he, John Graham, will pay it.

In case the law should require the note to be protested in order to bind the drawers and indorsers, it would be necessary for a notary public to take the instrument to John Morris and John Morris would state to the notary public that he refused to pay it; the notary would make out a paper stating that the instrument had been dishonored, and that he had protested it for non-payment and to this statement he would attach his seal.<sup>2</sup> This is the protest, it is not the notice of the protest. The protest then is a solemn declaration in writing made by the notary public that the instrument has been dishonored by a refusal to pay it.<sup>3</sup>

At the trial this statement of the protest by the notary would be good proof that the instrument had been protested and the notice had been given to John Graham. After the instrument is protested as above set out, the notary would send notice to all those parties on the instrument whom the owner desired to hold responsible, which notice would state that the instrument had been presented for payment, that payment had been refused, and that the instrument had been protested for non-payment.

<sup>2</sup> Tevis v. Randall, 6 Cal. 632, 65 Am. Dec. 547; Shields v. Farmers Bank, 5 W. Va. 254.

<sup>3</sup> Townsend v. Lorain Bank, 2 Ohio St. 345; Swayze v. Britton, 17 Kan. 625.

The stipulation in this instrument waiving protest and notice of protest waives these rights, otherwise it would be necessary for James Spencer, the holder, to take these steps in order to recover from John Graham, an indorser, in case the instrument was one which the law required to be protested. The contract of the indorser under such circumstances is that he will pay the instrument provided the maker refuses to pay it and the owner of the instrument protests it and gives notice of that fact.

(o) "John Morris" is the maker or drawer of this note. He is the one who promises to pay it in the first instance. The note may be signed by more than one as we shall consider more fully, in another part of this work.

**§ 3a. Other clauses added in different jurisdictions.** In some jurisdictions by statute or by court decision certain clauses may be added to promissory notes which do not render such notes invalid or non-negotiable in those jurisdictions. The holder of the instrument should consult the law of the particular jurisdiction to see whether or not such clauses affect the negotiability of the instrument in that jurisdiction. Among these clauses the following are the most common:

(1) "For value received, negotiable and payable without defalcation or discount."

(2) "We also agree to waive protest, notice thereof and diligence in collecting."

(2) "With interest thereon from-----until paid, at the rate of-----per cent. per annum payable monthly, both principal and interest payable in the like Gold Coin."

(4) "If this note is not paid when due, and if placed in the hands of a attorney for collection, we agree to pay an attorney's fee of five per cent of the face of this note."

(5) "Without defalcation, negotiable and payable at their office in-----, for value received, and they are hereby directed to place the proceeds to the credit of-----."

(6) "This note and the consideration thereof, are for the benefit of my sole, separate and individual estate, which estate I expressly hereby charge with the payment thereof. (Married woman's negotiable note)."

(7) "To be discounted at the rate of eight per cent. per annum; and if not paid at maturity, to bear interest thereafter at eight per cent. per annum, with all costs of collection and 10 per cent. attorney's fees."

(8) "We the endorsers, guarantors, assignors and sureties, severally waive presentment for payment, protest and notice of protest for non-payment of this note and all defense on the

ground of any extension of time of its payment that may be given by its holder or holders to the maker or makers thereof."

(9) "Value received. The drawer and endorser of this note hereby waive the benefit of-----homestead exemption as to this debt."

(10) "No extension of the time of payment, with or without our knowledge, by receipt of interest or otherwise, shall release us, or either of us, from the obligations of payment. I sign this note intending hereby to charge my separate estate with the payment of same."

(11) "Also reasonable attorney's fee in any action brought on this note."

(12) "The drawers and endorsers severally waive presentment for payment, protest and notice of protest and non-payment of this note, and all defenses on the ground of any extension of the time of its payment that may be given by the holder or holders to them or either of them. Witness our hands and seals."

(13) "And if this note is placed in the hands of an attorney for collection or has to be sued on, we, the makers and all endorsers, agree to pay ten per cent attorney's fees, and all expenses incurred in its collection, in addition to the principal and interest, same to be taxed up in judgment."

(14) "And if interest is not paid annually, to become as principal and bear the same rate of interest. Makers and endorsers hereby waive presentment and notice and protest."

(15) "All the signers of this note agree to be holden for its payment, although the time of payment for the whole or any part of this sum should be extended from time to time; such extension not to exceed in the aggregate six years."

(16) "If this note is not paid when due, or is collected by attorney or legal proceedings, we promise to pay an additional sum of ten per cent. of the amount of this note as attorney's fees. We waive protest and notice of non-payment and all exemption laws and rights thereunder."

(17) "In case of the insolvency of the undersigned any indebtedness due from the legal holder hereof to the undersigned may be appropriated and applied hereon at any time, as well before as after the maturity hereof."

(18) "We, and each of us, hereby empower any attorney at any time hereafter to appear for us, either or any of us, in any court, in term time or vacation, and confess judgment against us, each or any of us, without process on the above note in favor of any legal holder for said sum, interest, costs and \$-----"

attorney's fees, and to release all errors and consent to immediate execution."

(19) "Now, should it become necessary to collect this note through an attorney, either of us, whether maker, security, or endorser on this note, hereby agrees to pay all costs of such collection, including a reasonable attorney's fee.

The drawers and endorsers severally waive presentment for payment, protest and notice of protest and non-payment of this note."

(20) "We agree that after maturity this note may be extended from time to time, by any one or more of us without the knowledge or consent of any of the others of us, and after such extension the liability of all parties shall remain as if no such extension had been made."

(21) "We, the endorsers, guarantors and sureties, severally waive presentment for payment, protest and notice of protest for non-payment of this note, and all defense on the ground of extension of time of its payment that may be given by its holder or holders to the maker or makers thereof. If this note is not paid at maturity and is placed in the hands of an attorney for collection, or suit is brought hereon, ten per cent. of the entire amount shall be paid as attorney's fee and costs of collection."

(22) "And if not so paid, the whole sum of principal and interest to become immediately due and collectible at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof-----promise and agree to pay, in addition to the costs and disbursements provided by statute-----Dollars in like Gold Coin for attorney's fees in said suit or action."

(23) "Giving said Bank the right of collecting this note at any time, notwithstanding the payment of interest in advance, or of extending from time to time, by the reception of interest in advance or otherwise, the payment of the whole or any part thereof, as may be convenient or agreeable to the Bank."

(24) "And further agree that in case of default in the payment of this note, principal or interest, to pay all costs and expenses of collecting same, including reasonable attorney's fees, to be fixed and determined by the court. Each of the makers hereof and the endorsers hereon, waive demand, protest and notice of non-payment."

(25) "Appraisalment and all legal exemptions waived. Interest to be paid-----annually, and if not so paid to become as principal and draw interest at the rate of ten per cent. per annum until paid."

(26) "The makers and endorsers of this note hereby expressly waive all right to claim exemption allowed by the Constitution and Laws of this or any other State, and agree to pay cost of collecting this note, including a reasonable attorney's fee, for all services rendered in any way, in any suit against any maker or endorser, or in collecting or attempting to collect, or in securing or attempting to secure, this debt, if this note is not paid at maturity. Notice and protest on the non-payment of this note is hereby waived by each maker and endorser."

(27) "And if default be made in the payment of the principal at maturity, or of interest when due, this note shall be immediately due and payable and the interest unpaid shall become part of the principal and both shall bear interest at the rate of ten per cent. per annum from the date of such default, both before and after judgment, and if this note, or any part thereof, is collected by an attorney, with or without suit, ten per cent. additional for attorney's fees.

The makers and endorsers hereof each expressly waive demand, protest, notice of non-payment and suit against the maker; and also agree that date of payment may be extended, in whole or in part, without our consent.

(28) "With interest from date at the rate of ten per cent. per annum until paid. Interest payable quarterly. Principal and interest payable in U. S. Gold Coin of the present standard of weight and fineness; and in case suit or action be instituted to collect this note, or any portion thereof, I promise to pay such additional lawful sum as the Court may adjudge reasonable as attorney's fees."

(29) "In case of the failure to pay any part of the principal or interest when and where due, the legal holder hereof may declare the full amount of this note then remaining unpaid as immediately due, and proceed to collect the same at once. If this note is collected by an attorney, either with or without suit, or if legal proceedings be begun for the collection of any amount due hereunder.....agree to pay a reasonable attorney's fee and all other costs and expenses of collection. The makers and endorsers of this note each expressly waive demand, notice of non-payment and protest, and also agree that this note may be extended in whole or in part without their consent."

(30) "For value received, negotiable and payable without defalcation or discount, with interest from.....at the rate of.....per cent. per annum, payable.....until paid.

We, the endorsers, guarantors and sureties, severally waive presentment for payment, protest and notice of protest for non-

payment of this note, and all defense on the ground of extension of time of its payment that may be given by its holder or holders to the maker or makers thereof."

(31) ("If not so paid to become a part of the principal, and bear the same rate of interest as above specified,) both principal and interest payable in Gold Coin in the present standard of weight and fineness, and in the event of suit for the collection hereof, counsel fees."

(32) "And-----do hereby authorize-----, Attorney at Law, to appear for-----in an action on the above note, at any time after said note becomes due, in any Court of Record, in or of the State of-----, to waive the issuing and service of process against-----and confess a judgment in favor of the legal holder of the above against-----for the amount that may then be due thereon, with interest at the rate therein mentioned, and costs of suit; and to waive and release all errors in said proceedings, petitions in error, and the right of appeal from the judgment rendered. Witness our hands and seals."

(33) "And if not so paid the whole sum of both principal and interest to become immediately due and collectible. In case suit is instituted to collect this note, or any portion thereof, I, we, or either of us promise to pay, besides cost and disbursements allowed by law, such additional sum as the Court may adjudge reasonable as attorney's fees in said suit."

(34) "And we, and each of us, do hereby authorize any attorney of any Court of Record in-----, to appear for us, either or any of us, in any such court, at the suit of the holder of this obligation upon the same, at any time after the maturity thereof, and waive the issuing and serving of the process, and confess judgment against us, either or any of us, and in favor of such holder, for the amount then appearing due thereon, and for costs of suit, and release all errors. We and each of us hereby agree that the holder of this note may, for any valuable consideration, extend the time of payment thereof, without notifying us, and that we will remain as sureties thereon thereafter. Witness our hands and seals the day and year above written."

(35) "The parties to this instrument, whether maker, endorser, surety or guarantor, each for himself hereby severally agrees to pay this note and waives as to this debt, all right of exemption under the Constitution and Laws of-----or any other State, and they each severally agree to pay all costs of collecting or securing, or attempting to collect or secure this



note, including a reasonable attorney's fee whether the same be collected or secured by suit or otherwise. And the maker, endorser, surety or guarantor of this note severally waives demand, presentment, protest, notice of protest, suit and all other requirements necessary to hold them."

(36) "With interest payable semi-annually at the rate of eight per cent. per annum from due. Delinquent interest and principal after maturity shall draw interest at eight per cent. per annum until paid. In case of suit thereon we agree to pay an attorney's fee. Makers, payees, endorsers, sureties and guarantors waive demand for payment, protest and notice of protest of this note and consent that any Justice of the Peace may have jurisdiction hereon to any amount not over \$300, and that time of payment may be extended from time to time without notice thereof. Payable at-----."

(37) "Said interest, if not paid as it becomes due, to be added to the principal and become a part thereof, and thereafter bear interest at the same rate as the principal, with ten per cent. on the entire amount unpaid if placed in the hands of an attorney for collection. We agree that after maturity the time of payment may be extended from time to time, by any one or more of us, without the consent of the other, and after such extension the liability of all parties shall remain as if no such extension had been made."

(38) "And we, the makers, sureties, endorsers and guarantors and each of us, do hereby authorize and empower any Attorney of any Court of Record, at any time after interest or principal in this obligation becomes due, to appear for us or either of us in any action or suit on this note in any such Court in-----, or elsewhere, and waive the issue and service of summons and confess judgment against us or any of us in favor of the payee or any holder of this note for the sum appearing to be due thereon, including interest and costs and ten per cent additional on the amount unpaid as attorney's fees, and thereupon to release all errors in said action and hereby agree that any extension of time shall not affect our liability."

(39) "For value received, negotiable and payable, without defalcation or discount, at the-----Bank of----- with interest from maturity at the rate of ten per cent. per annum. The makers, signers and endorsers of this note severally waive demand notice and protest, and agree to all extensions and partial payments, before or after maturity, without prejudice to the holder, and if this note is placed in the hands of an attorney for collection, an additional ten per cent. for attorney's fees."

§ 4. **Form of bill of exchange.** The following is the ordinary form of an inland bill of exchange:

\$120.00	Chicago, Ill., December 1, 1921.
-----Thirty days after date-----	
Pay to the order of John Matlock-----	
One Hundred and Twenty-----	Dollars.
Value received, and charge the same to account of	
To Irving Dean,	
Jamestown, N. Y.	
HENRY HAMILTON.	

§ 5. **General characteristics of bill of exchange.** Let us examine this instrument, considering, however, only those formal and essential parts which are not found in the promissory note. There are three parties to this instrument; John Matlock is the payee, Henry Hamilton is the drawer and Irving Dean the drawee. Irving Dean, the drawee, becomes Irving Dean, the acceptor, by writing "accepted" and his name, or words of similar import, across the face of the instrument.

§ 6. **Form of a check.** The following is the common form of a check

Detroit, Mich., December 1, 1921. No. 15	
The Eagle National Bank.	
Pay to the order of Albert Carter-----	\$200.00
-----Two Hundred-----	Dollars.
JOHN MARSH.	

§ 7. **General characteristics of check.** A check is the most common instrument and in explaining the other two instruments all parts of this instrument have been explained. Albert Carter is the payee and John Marsh is the maker or drawer and the Eagle National Bank is the drawee.

§ 7a. **Origin and development of negotiable instruments.** It is interesting that we should look into the origin and develop-

ment of these instruments whose form and general characteristics we have been considering. In general we may say that this development has been through three stages.

The first stage we may call the barter stage, for at that early time money as the term is understood and used today was not known. At this stage the evidence of value was grain or skins or cattle. In agricultural communities grain served this purpose; among fishing people the products of the sea; and in hunting races the skins of animals. This early stage was clearly a stage of barter.

The second stage we may call the metal stage, when metal took the place of grain and skins and cattle, for these latter when used for purchasing purposes were open to many objections as can be readily understood. It was seen that it was necessary to adopt a token to represent value which would be sufficiently portable and durable to fulfill its purpose. Iron and the other commoner metals in turn served their day, and finally of all metals gold and silver showed themselves to be the most suitable as evidences of value. The gold coin was not successfully introduced into England until the reign of Edward III. ;

The third and last stage we may call the commercial paper or negotiable instruments stage. This is the present stage when credit as evidenced by negotiable instruments is able to pass from hand to hand as the representative of value or of money. These instruments are valuable or worthless dependent on the financial ability of the parties to these instruments.

It would be impossible to transact business of any magnitude today if cash payments were required. We see the truth of this when we consider that more than 90% of all commercial transactions are estimated to be carried on today by the medium of commercial paper or negotiable instruments. Were it possible to estimate accurately the total sums for which checks, promissory notes and bills of exchange are annually drawn, the result would be so enormous as to be beyond intelligent comprehension. The only source of information which we have in this matter is concerning the checks and drafts and other negotiable instruments which pass through the Clearing Houses of the country, and from this one source alone it is estimated that the total amount of these instruments passing through said Clearing Houses of the entire country amount annually to about Four Hundred Billion Dollars (\$400,000,000,000.00).

Thus we see the great importance of these small pieces of paper known as negotiable instruments in the business and commercial life of this country.

## CHAPTER II.

### LAW MERCHANT.<sup>1</sup>

- |  |                                 |
|--|---------------------------------|
| § 8. Meaning of term.                              | § 11. Origin of promissory note |
| 9. Origin.   | under law merchant.             |
| 10. Origin of bill of exchange under law merchant. | 12. Law merchant codified.      |

**§ 8. Meaning of term.** The law merchant might be considered as a code of rules growing out of the needs of trade which the courts administering treated as distinct from the ordinary common law of England.

The law merchant in other words is a system of law which does not rest exclusively on the positive institutions and local customs of any particular country, but consists of certain principles of equity and usages of trade which general convenience and a common sense of justice have established, to regulate the dealings of merchants and mariners in all the commercial countries of the civilized world.<sup>2</sup>

The law merchant is an example of how a custom or usage becomes gradually grafted into the law until it becomes as much a part of the system of law as any other principle in that system. It was first a mere particular usage which became general in its character and finally received the sanction of legal tribunals which recognized it as law.<sup>3</sup> We must understand that the law merchant was no part of the law of England for generations after it had followed trade, in a private capacity, to the British Islands. Unlike admiralty and equity, it was for centuries a sort of tolerated outlaw, living only as the merchants could keep it alive. The law merchant is not a modification of the common law, it occupies a field over which the common law does not and never did extend.

<sup>1</sup> On Law Merchant see: Vanheath v. Turner, Winch 24; Goodwin v. Roberts, L. R. 10 Ex. 346. See also: The Elements of Mercantile Law by Thomas Edward Scrutton, Chapters I, II; Street on Foundations of Legal Liability; Smith's Mercantile Law, In-

roduction to 10th Ed.; Chalmers on Bills of Exchange, Preface; Lowndes on Marine Insurance; Scrutton on the Influence of the Roman Law on the Law of England, Chapter XIII, XIV.

<sup>2</sup> 3 Kent Com. 2.

<sup>3</sup> 6 Y. B. 13 Edw. IV, 9 Pl. 5.

· § 9. **Origin.** The law merchant has gone through three stages in reaching the position it now holds in the legal tribunals. The first stage extended from the earliest times to the year 1606. During this time the law merchant was considered as a special kind of law for a particular class of people. During this period the business of the commercial world was transacted or conducted in the great fairs held at certain places at fixed times each year, to which merchant and trader came. At each fair there sat a Court to administer speedy justice, in accordance with the law merchant,<sup>4</sup> to the merchants and traders there assembled. When any doubt or dispute arose it was settled according to the custom among merchants as declared by the merchants present.

The second stage of the law merchant extends from the year 1606 when Lord Coke took office as Chief Justice of England until the year 1756 in which Lord Mansfield became Chief Justice. The most noticeable effect upon the law merchant during this period was the manner of its administration. The special court of the fairs died out and the law merchant was administered by the King's Court of Common Law. This court did not administer it as law but as a custom.<sup>5</sup> As this court only administered it as a custom the cases went to the jury without the facts and customs separated, in consequence of which very little was done in establishing any system of mercantile law in England during the period.

The third stage began with the year 1756 when Lord Mansfield became Chief Justice of the King's Bench and extends to the present time. The thirty years which Lord Mansfield sat as Chief Justice was the period in which a system of mercantile law was fully established in the common law courts. This system of law has been added to constantly by the addition of new usages of the mercantile world which have been proven to the Courts.

"Bills of Exchange at first extended only to merchant strangers trafficking with English merchants; and afterwards to inland bills between merchants trafficking the one with the other in England; and afterwards to all traders, and then to all persons whether traders or not; and there was then no need to allege any custom of merchants."<sup>6</sup>

Thus in its origin the law merchant distinguished the contracts of foreign merchants from the contracts of ordinary individuals, construing them not according to the tenets of the common law, but according to the usages of trade. This custom of regulating

<sup>4</sup> Blackstone, Book III, page 32.

<sup>5</sup> Brownich v. Lloyd, 2 Lut-

<sup>6</sup> Vanheath v. Turner, 1 Winch. wyche's Rep. 1585.  
24 (1622).

dealings between native and foreign merchants was extended to dealings between native merchants, but was confined to the persons of merchants, as apart from those pursuing other vocations. And it was not until 1666 that courts declared that "the law of merchants is the law of the land, and the custom is good enough generally for any man, without naming him merchant."

§ 10. **Origin of bill of exchange under law merchant.** The bill of exchange is the earliest form of a negotiable instrument.<sup>7</sup> Bills of exchange, which were first used by the bankers and merchants of Florence and Venice to facilitate the transfer of credits between distant points, came to England through France early in the fourteenth century, that is, came from the continent of Europe where they formed part of the modern Roman or Civil law. The English merchant used it as an instrument whereby he avoided either sending money out of the country or bringing money into the country. To pay a third party he would give an order on one of his foreign debtors. Originally a bill of exchange was purely a trade transaction which was a means whereby one country avoided sending money to another.

§ 11. **Origin of promissory note under law merchant.** Promissory notes are said to be of great antiquity and to have been in use among the Romans; but the negotiability of these instruments was unknown among the Romans and is a development of modern times. The time of the introduction of promissory notes into England is not absolutely known but it appears to have been about thirty years before the reign of Queen Anne. They were in use a considerable time before they became the subject of litigation and legislation. The common-law judges were opposed to the negotiability of promissory notes payable to order or bearer<sup>8</sup> and it became necessary for Parliament to legislate upon the matter, the result of which was the enactment of a statute conferring upon promissory notes the same qualities of assignability and negotiability as were possessed by the inland bills of exchange.<sup>9</sup>

§ 12. **Law merchant codified.** In the seventeenth century the law of Bills of Exchange was codified in France, but in England no general codification took place until 1882 (when the English Bills of Exchange Act was enacted). In the United States the earliest general codification is found in the California Civil Code in 1872, but this has been followed within the last decade by a more widespread adoption of the Negotiable Instruments Law

<sup>7</sup> *Mogodara v. Holt*, 1 Show. 318.

<sup>8</sup> *Buller v. Crips*, 6 Mod. 30.

<sup>9</sup> Statute of 3 and 4 Anne, Chapter, 9, §§ 1-3.

on the general lines of the English Bills of Exchange Act in all but one of the states of the Union. That is, it has been adopted in forty-seven out of the forty-eight states of the Union, the state of Georgia being the only state which has not adopted the law. It has also been adopted in Alaska, District of Columbia, Hawaii and the Philippine Islands, but has not been adopted in Porto Rico and the Panama Canal Zone.<sup>10</sup>

<sup>10</sup> See Introduction to Negotiable Instruments Law Annotated, in Appendix.

## CHAPTER III.

### NEGOTIABILITY.

§ 13. Meaning of term.

14. Origin of negotiability.

15. Distinction between assignability and negotiability.

§ 16. Purpose of negotiability.

17. Payment by negotiable instrument.

§ 13. **Meaning of term.** The term negotiability implies a transferable quality in the instrument to which it is applied. It is that quality of bills of exchange and promissory notes which renders them transferable from one person to another, and by possessing which they are emphatically termed negotiable paper.<sup>1</sup>

Negotiability in the law merchant is the property whereby a bill, note or check passes or may pass from hand to hand like money, so as to give the holder in due course the right to hold the instrument and collect the sum payable, for himself, free from defenses.

The Negotiable Instrument Law provides:

*"An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery."*<sup>2</sup>

Negotiation means the act by which a negotiable instrument is put into circulation by being passed by one of the original parties to another person. If A gives B a check on C bank, and B presents the check at the counter of C, no negotiation is necessary or had. He simply demands and receives payment; but if B goes to D store and buys a bill of goods and tenders the indorsed check in payment, he negotiates the check.<sup>3</sup>

*"An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise."*<sup>4</sup>

<sup>1</sup> Kinney's Law Dictionary; *Odell v. Gray*, 15 Mo. 337, 15 Am. Dec. 147; *Shaw v. Merchants Nat. Bank*, 101 U. S. 557; *Anniston Loan & Trust Co. v. Steckney*, 108 Ala. 146, 19 So. 63, 31 L. R. A. 234.

<sup>2</sup> Neg. Inst. Law, § 30, where all

cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>3</sup> *Aurora State Bank v. Hayes Eames Elevator Company*, 88 Neb. 187, 190, 129 N. W. 279.

<sup>4</sup> Neg. Inst. Law, § 47, where all cases directly or indirectly bearing upon or citing the Law are grouped.



§ 14. **Origin of negotiability.** Originally all instruments, including bills of exchange, promissory notes and bank checks were non-negotiable—in the sense that the maker could, when asked for payment, deduct from the amount due on the instrument any just claim that he had against the original owner. Such claim was termed a counter-claim, or set-off. In the revival of commerce in Italy, in the eleventh century, merchants and traders, feeling the need of a commercial instrument, similar to a bank bill that could be used in barter and trade and commercial transactions, and realizing that no such instrument could be passed from hand to hand or sold readily, no matter how good the financial standing of the maker was, if he, the maker, could always insist on adjusting accounts with the original owner—adopted a custom later known as the law merchant, under which notes, checks, drafts, and bills of exchange, drawn in certain prescribed forms, and in the hands of a *bona fide* purchaser, could be enforced to their full extent against the maker, regardless of certain defenses or counter-claims that the maker might have against the original holder. Such instruments were negotiable and such was the origin of negotiability.<sup>3</sup>

In England, embarrassments arose in the application of the common law to these forms of contract and it was only after a long struggle that the courts engrafted upon the common law the law merchant, by which the parties to bills and notes were put upon a footing entirely different from that of parties to other contracts.<sup>4</sup>

The customs and usages of merchants as to negotiability of bills of exchange finally came to be recognized and enforced by the courts but were not put upon a firm basis until they received the sanction of parliament. Promissory notes were first recognized by the courts as negotiable and later they were refused that recognition.<sup>5</sup> Their negotiability was at last established in 1705 by a statute passed by parliament.<sup>6</sup> The principles of this statute have been followed in a general way by the various states of this country and embodied in statutes.

§ 15. **Distinction between assignability and negotiability.** Assignability is a more comprehensive term than negotiability. Assignability pertains to contracts in general while negotiability pertains to only a special class of contracts. Property, rights in property and other valuable rights evidenced by a contract are

<sup>3</sup> For a complete discussion of this subject see Street on Foundations of Legal Liability.

<sup>4</sup> Buller v. Crips, 6 Mod. 29.

<sup>5</sup> Clerk v. Martin, 1 Salk. 129, 2 Ld. Raymond 757.

<sup>6</sup> Statute of 3 and 4 Anne, Chap. 9.

transferred by assignment.<sup>7</sup> The rights evidenced or created by ordinary contractual obligations are usually a kind of property, having in themselves a value measured in law by the damages assessable upon their breach. This property may at this stage of the law pass from person to person just as any other property does. But there are well settled rules governing such transfer, which are the outgrowth and mingling of early doctrines of the courts of common law and of equity. The primitive view was that in contracts of this nature that only a party to the agreement could sue upon the contract. This was based upon the ground that the contract created a personal obligation between the creditor and debtor.<sup>8</sup> This doctrine has been greatly modified in the various states by statutes which declare that every action must be prosecuted by the real party in interest. Title to any property or rights in property cannot be completely passed, as to the debtor, by assignment without notice to him. The result of this rule is that if the debtor performs his contract to the original creditor without notice of the assignment he is discharged.<sup>9</sup> These are not the rules as to negotiability. The person who takes an instrument by indorsement takes it free from all equities.<sup>10</sup> While a person who takes an instrument by assignment takes it subject to the equities incident to it.<sup>11</sup> This is the distinguishing feature between assignability and negotiability. Negotiability is applied to instruments which contain a promise to pay money. These instruments embodying a promise to pay money may be either negotiable or non-negotiable. In order to be negotiable under the law merchant they must contain some words indicative of negotiability.<sup>12</sup> The usual words employed to denote this quality are to "A or order," to "the order of A" or "to bearer."

Thus then the material difference between a non-negotiable instrument and a negotiable instrument is that the party to a non-negotiable instrument who has agreed to pay money or prop-

<sup>7</sup> Hoag v. Mendenhall, 19 Minn. 335; Andrews v. Nat. Bank of North Am., 7 Hun 20; Harlowe v. Hudgins, 84 Tex. 107, 19 S. W. 364, 31 Am. St. Rep. 21.

<sup>8</sup> Beecher v. Buckingham, 18 Conn. 110; McWilliam v. Webb, 32 Ia. 577; Halloran v. Whitcomb, 43 Vt. 306.

<sup>9</sup> Van Buskirk v. Insurance Co., 14 Conn. 141; Merchants' and Mechanics Bank v. Hewett, 3 Ia. 93; Richards v. Griggs, 16 Mo. 416.

<sup>10</sup> Everston v. Bank, 66 N. Y. 14; Wilson Sewing Mach. Co. v. Spears, 50 Mich. 534, 15 N. W. 894.

<sup>11</sup> Trustees of Union College v. Wheeler, 61 N. Y. 88; Warner v. Whittaker, 6 Mich. 133; Timms v. Shannon, 19 Md. 296.

<sup>12</sup> United States v. White, 2 Hill (N. Y.) 59, 37 Am. Dec. 374; Davaga v. Moore, 3 McCord (S. C.) 482; Putnam v. Crymes, 1 McMull (S. C.) 9, 36 Am. Dec. 250.

erty under it, may when the money or consideration is demanded by a purchaser, set off against it any claims that he has against the original owner, which he could have set off if it had not been assigned—while the *bona fide* purchaser, before maturity, of a negotiable instrument can enforce it for its full amount against the maker, regardless of any counterclaim or other equities that the maker has against the original owner.

**§ 16. Purpose of negotiability.** The primary purpose of negotiability is to allow bills and notes the effect which money, in the form of government bills or notes supplies in the commercial world.<sup>13</sup> A man does not always have property or valuable property rights which he can turn into cash at any moment. These things, however, measure his credit, and he avails himself of this credit by executing his note to his debtor who in turn endorses this to a third person. Thus men in this way without cash in hand are enabled by means of credit to conduct and carry to completion business and commercial enterprises. The sole purpose of negotiability then is to allow men of undoubted credit to carry on a business enterprise upon their promissory notes knowing that other business men will treat these promises as cash. Furthermore the purpose of negotiability is to allow bills and notes to go from hand to hand in the commercial markets and to take the part of money in commercial transactions.

**§ 17. Payment by negotiable instrument.** In the absence of an agreement, either express or implied, it is generally held that a negotiable instrument is not an absolute and unconditional payment of the debt and a discharge of the original obligation. Thus it has been held that the debtor's own note given for a precedent or contemporary debt is conditional payment.<sup>14</sup> But some jurisdictions hold that it is absolute payment.<sup>14a</sup>

If, however, a new note is given in renewal of a former note and for a less amount it will be considered as a satisfaction of the prior note as all differences are presumed to have been adjusted when the new note was given.<sup>15</sup>

<sup>13</sup> *Friedlander v. Railway Co.*, 130 U. S. 416.

<sup>14</sup> *Winsted Bank v. Webb*, 39 N. Y. 325, 10 Am. Dec. 435; *Nightingale v. Chaffee*, 11 R. I. 609, 23 Am. Rep. 531; *Sheehy v. Mandeville*, 6 Cranch 258.

*Contra*, *Ward v. Bourne*, 56 Me. 61; *Smith v. Bettger*, 68 Ind. 254, 34 Am. Rep. 256.

<sup>14a</sup> *Hibben v. Hicks*, 26 Ind. App. 646, — N. E. —.

<sup>15</sup> *Pipen v. Wade*, 57 Ga. 223; *Bolt v. Dawkins*, 16 S. C. 198; *Draper v. Hiitt*, 43 Vt. 439, 5 Am. Rep. 292.

But see, *Jenness v. Lane*, 26 Me. 475.

Nor is a new note executed by only a part of the original promisors generally to be considered as payment of the prior note in the absence of any agreement to that effect.<sup>16</sup>

In case the bill or note of a third person is given in payment of a precedent debt the payment is generally held to be conditional.<sup>17</sup>

But when the stranger's note is payable to bearer or has been indorsed in blank by a prior holder so that it may be transferred without indorsement it is then considered as absolute payment when given for a contemporaneous debt.<sup>18</sup>

But it is only as conditional payment when payable to order and can be transferred only by indorsement.<sup>19</sup>

A note is not discharged by giving a new note which proves invalid.<sup>20</sup> Thus the original note is not discharged even though it is surrendered and a new note is accepted in payment without knowledge that the new note is a forgery.<sup>21</sup>

It is not necessary that the old note be surrendered or canceled before a new note can operate as payment.<sup>22</sup>

<sup>16</sup> *Hill v. Sleeper*, 58 Ind. 221; *Bates v. Rosekrans*, 37 N. Y. 409; *Boston Nat. Bank v. Jose*, 10 Wash. 185, 38 Pac. 1026.

But see, *Stanley v. McElrath*, 86 Cal. 449, 25 Pac. 16, 10 L. R. A. 545; *Bansman v. Credit Guarantee Co.*, 47 Minn. 377, 50 N. W. 496.

<sup>17</sup> *Gresham v. Morrow*, 40 Ga. 487; *Woods v. Woods*, 127 Mass. 141; *Gibson v. Tobey*, 46 N. Y. 637, 7 Am. Rep. 397.

But see, *Dennis v. Williams*, 40 Ala. 633.

<sup>18</sup> *Tobey v. Barber*, 5 Johns. 68, 4 Am. Dec. 326; *Day v. Kinney*, 131 Mass. 37; *Susquehanna Fert. Co. v. White*, 66 Md. 444, 7 Atl. 802.

But see, *Huse v. McDaniel*, 33 Ia. 406, 4 Am. Rep. 244.

<sup>19</sup> *Monroe v. Hoff*, 5 Denio 360; *Shriner v. Keller*, 25 Pa. St. 61.

See *Day v. Thompson*, 64 Ala. 269.

<sup>20</sup> *Williams v. Gilchrist*, 11 N. H. 535; *Winsted Bank v. Webb*, 46 Barb. 177; *Edgell v. Stanford*, 6 Vt. 551.

<sup>21</sup> *Athens First Nat. Bank v. Buchanan*, 87 Tenn. 32, 9 S. W. 202, 10 Am. St. Rep. 617, 12 L. R. A. 199; *West Phila. Nat. Bank v. Field*, 143 Pa. St. 473, 22 Atl. 829, 24 Am. St. Rep. 562.

<sup>22</sup> *French v. French*, 84 Ia. 655, 57 N. W. 145, 15 L. R. A. 30; *Dixon v. Dixon*, 31 Vt. 450, 76 Am. Dec. 129; *East River Bank v. Butterworth*, 45 Barb. 476.

## CHAPTER IV.

### GENERAL DOCTRINE.

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|--|---|
| § 18. Negotiable instruments similar to money. | § 20. Equities.                             |
| 19. Bona fide holder.                          | 21. Circulation when parties not immediate. |

§ 18. **Negotiable instruments similar to money.** As has already been pointed out the peculiarities which attach to negotiable paper are the growth of time, and were acceded to for the benefit of trade. While all choses in action are now transferable, the negotiable instrument is the only species which carries, by transfer, a clear title and a full measure; and like an instrument under seal, imports a consideration. Negotiable instruments are thus given many of the peculiarities of money—i. e., gold and silver coin and bank bills.<sup>1</sup>

§ 19. **Bona fide holder.** In order to take advantage of the special privileges attached to a negotiable instrument, the holder must have taken it before it was due,<sup>2</sup> and with no notice of any irregularity in the instrument, or of any valid defenses that the maker had to it,<sup>3</sup> and the owner must have parted with something of value in acquiring it.<sup>4</sup> The consideration need not have been money.<sup>5</sup> It may have been property,<sup>6</sup> the granting of credit,<sup>7</sup> or some disadvantage which the holder assumed in acquiring it. Such a holder is a *bona fide* holder. He is often spoken of as a holder in due course, also, as a *bona fide* purchaser for value without notice.

<sup>1</sup> *Friedlander v. Railway Co.*, 130 U. S. 416; *Russel v. Whipple*, 2 Cow (N. Y.) 536; *Durgin v. Bartol*, 64 Me. 473.

<sup>2</sup> *Lansing v. Gaine*, 2 Johns. (N. Y.) 300, 3 Am. Dec. 422; *Lancaster Bank v. Woodard*, 18 Pa. St. 357, 57 Am. Dec. 618; *Gordon v. Wansey*, 21 Col. 77.

<sup>3</sup> *Ward v. Doane*, 77 Mich. 328, 43 N. W. 980; *Greneaux v. Wheeler*, 6 Tex. 515; *Smith v. Florida Cent. Ry. Co.*, 43 Fed. 731; *Canajoharie Nat. Bank v. Diefendorf*, 123 N. Y. 191, 25 N. E. 402, 10 L. R. A. 676.

<sup>4</sup> *Webster v. Cobb*, 17 Ill. 459; *Tillow v. Britton*, 9 N. J. L. 120; *Kinkel v. Harper*, 7 Colo. App. 45, 42 Pac. 173.

<sup>5</sup> *In re Great Western Tel. Co.*, 5 Biss. (U. S.) 363, 10 Fed. Cas. No. 5,740; *Mayer v. Heidelberg*, 123 N. Y. 332, 25 N. E. 416, 9 L. R. A. 850; *Greenwood v. Lowe*, 7 La. Ann. 197.

<sup>6</sup> *Pond v. Waterloo Agricultural Works*, 50 Ia. 596.

<sup>7</sup> *Drulling v. Battle Creek First Nat. Bank*, 43 Kan. 197, 23 Pac. 94, 19 Am. St. Rep. 126.

§ 20. **Equities.** A makes a certain instrument payable to B, promising to pay him a certain amount of money. That instrument is valid regardless of whether or not it is negotiable by the law merchant. B can recover from A, providing, of course, there has been a consideration, and if B assigns that over to some one else, that other person can recover also from A. The instrument is valid, then, whether it is negotiable by the law merchant or not. The question as to whether or not it is negotiable by the law merchant becomes important when there are some equities which attach to the instrument, and then, if it is not negotiable by the law merchant, the person takes it subject to those equities; it has certain luggage attached to it which the person who gets the instrument must also take—he must take the luggage with the instrument. Therefore, it is important to know whether or not an instrument is negotiable by the law merchant. Instruments which have this luggage attached to them are binding, but we are considering now whether these instruments are negotiable by the law merchant for other reasons.

In general it may be here stated that there are certain essentials which an instrument negotiable by the law merchant must have. The bill must contain an order, not merely a request.<sup>8</sup> A orders you to do so and so; he does not merely request you to do it. A note must contain a promise.<sup>9</sup> A promises to do. The order or promise must be unconditional; absolutely for the payment of money alone.<sup>10</sup> Thus an order for 50 bushels of wheat or corn is not sufficient because not payable in money. There must be a payment in money and nothing else attached to it. The amount of money must be certain;<sup>11</sup> the time of payment must be a time certain to arrive,<sup>12</sup> and the instrument must be specific as to all its parties. In a promissory note it must be specific as to all its parties, that is, it must be specific as to the maker and the payee. In a bill of exchange the drawer, drawee and payee must be specific.

Now, the question, whether an instrument has all these requisites which are required by the law merchant in order to be negotiable, becomes important when the instrument is in the hand.

<sup>8</sup> Gillilan v. Myers, 31 Ill. 525; Knowlton v. Cooley, 102 Mass. 233.

<sup>9</sup> Smith v. Bridges, 1 Ill. 18; Hatch v. Gillettee, 8 N. Y. App. Div. 605, 40 N. Y. S. 221.

<sup>10</sup> South Bend Iron Works v. Paddock, 37 Kan. 510, 15 Pac. 574; Wainwright v. Straw, 15 Vt. 215, 40 Am. Dec. 675.

<sup>11</sup> Neg. Inst. Law, § 2; Hatch v. Dexter First Nat. Bank, 94 Me. 348, 47 Atl. 908, 80 Am. St. Rep. 401.

<sup>12</sup> Hanel v. Marston, 7 Rob. (Ia.) 34; New Windsor First Nat. Bank v. Brynum, 84 N. C. 24, 37 Am. Rep. 604; Neg. Inst. Law, § 20 (1); Bills Exch. Act, §§ 3, 83.

of a *bona fide* purchaser for value. A person who gets a note with equities attached to it, and gives value for it, gets that instrument free from all those equities if it is negotiable by the law merchant. For instance, suppose a note has been obtained from A by fraud; he thinks he has been signing a receipt when in fact he was signing a negotiable promissory note, and he has been negligent in signing; it gets into the hands of X, and X transfers it to Y. Y can recover against A. That equity does not run against a *bona fide* holder for value.<sup>13</sup> Suppose it has some of these essentials lacking in order to make it negotiable. In that case X, Y, or the person who holds the instrument for value, would take it subject to the equity that the note was obtained from A by fraud. If it was not negotiable by the law merchant, A would have a right to take advantage of that equity.

There are some things which even a *bona fide* holder for value without notice can not maintain suit against. Suppose some one forges A's name to a note; now, the good reason of the law merchant and merchants generally would hold that that should not be held as valid against A, even in the hands of a *bona fide* purchaser for value without notice. A is not a party to it, and we shall find out later that that is a real defense; and any person holding that instrument and trying to recover against A, A would have the right to set up against him that it was a forgery, even though it was negotiable by the law merchant and even though the person holding it is a holder for value without notice.<sup>14</sup>

Thus we see there is one fact and principle that we must bear in mind all the time, and that is, if a person makes an agreement or contract of any nature, and it is such a contract as would be binding in the law of contracts, then that contract is binding as between those parties. So, if a person makes a contract or a written instrument of any nature, whether or not that instrument is negotiable by the law merchant, he is bound if he would be bound by the law of contracts. If one attempts to make a promissory note or a bill of exchange but does not do it and makes some other paper, he is bound just the same. We must consider the difference. The law of contracts, we might say, controls always as between the immediate parties. The law of bills and notes becomes important when we consider the paper in the hands of an innocent holder for value.

<sup>13</sup> Von Windisch v. Klaus, 46 Conn. 433; Strough v. Gear, 48 Ind. 100.

17, 92 Am. Dec. 521; Roach v. Woodall, 91 Tenn. 206, 18 S. W. 407, 30 Am. St. Rep. 883.

<sup>14</sup> Foltier v. Schroder, 19 La. Ann.

§ 21. **Circulation when parties not immediate.** As between the immediate parties, for example, the drawer and payee on a promissory note, circulation has not begun, but when it circulates in other hands, then it partakes of the nature of money and will circulate just as money does, providing it is negotiable by the law merchant.<sup>15</sup> Suppose X promises to pay A \$50 and to deliver him 50 bushels of wheat. Now, in the absence of any fraud or anything of that nature, that is absolutely binding as between them, and B can recover from A \$50 and 50 bushels of wheat. Now, suppose that is assigned by B to C and C to D. Now, that is a case where there is a valid contract. Any party to the instrument can proceed upon it and can recover. Now, suppose this instrument has been procured by fraud; that A believes he is making a receipt for 50 bushels of wheat to B and, as a matter of fact, he promises to pay him \$50 and deliver him 50 bushels of wheat, but he is negligent and careless and as a result it turns out to be some other instrument. Well, of course, between A and B, B could not recover, but suppose B gets it and indorses it to C and C to D. Can D recover upon that instrument? No. That is an instrument that would be *non-negotiable* by the law merchant and D could not recover on it; there were certain equities that went with it, and A can set the equities up against anyone who gets that instrument. So, when it gets in the hands of anybody else, A has a right to set up that defense.<sup>16</sup> Now, suppose it is *negotiable* by the law merchant, the promise is to pay \$50 alone, but suppose the instrument has been procured by fraud from A and B instead of being a receipt it is a promissory note and A thinks he is signing a receipt, and the circumstances are like the others. In that case B could not recover against A, although it has all the requisites of a negotiable instrument. As between the immediate parties the ordinary law of contracts would apply and the fraud could be set up.<sup>17</sup> But let us suppose that it is indorsed by B to C and by C to D. D has no notice of any equity and gives full value for it, and he endeavors to recover against A. A cannot set up fraud as a defense because it is an instrument negotiable by the law merchant and in the hands of a *bona fide* holder for value without notice. A cannot set up that defense. Now, if D knew that that had been procured by fraud he could not collect.

<sup>15</sup> *Supra*, § 18, note 1.

<sup>16</sup> *Trustees of Union College v. Wheeler*, 6 N. Y. 88; *Timms v. Shannon*, 19 Md. 296.

<sup>17</sup> *Lancaster Nat. Bank v. Mackey*,

5 Kan. App. 437, 49 Pac. 324; *Turley v. Bartlett*, 10 Heisk. (Tenn.) 221; *Kulenkamp v. Groff*, 7 Mich. 675, 40 N. W. 57.



If a person gets a negotiable instrument and he has given value and has no notice of wrongdoing, good common sense would say that he could recover just like he had gotten a ten dollar bill. That is the general doctrine underlying the law of negotiable instruments.<sup>18</sup>

<sup>18</sup> *Supra*, § 18, note 1.

## CHAPTER V.

### PARTIES AND THEIR CAPACITY.

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| <p>§ 22. Parties and their capacity—<br/>In general.</p> <p>23. Parties partially or wholly incapacitated—In general.</p> <p>24. Same—Persons lacking mental capacity—Infants.</p> <p>25. Same—Persons lacking mental capacity—Lunatics.</p> <p>26. Same—Persons lacking mental capacity—Drunkards and spendthrifts.</p> <p>27. Same—Persons lacking legal capacity other than mental—Married women.</p> <p>28. Same—Persons lacking legal capacity other than mental—The bankrupt or insolvent payee.</p> <p>29. Same—Persons lacking legal capacity other than mental—Alien enemies.</p> <p>30. Parties not incapacitated—In general.</p> | <p>§ 31. Same—Persons acting in fiduciary capacity—Executors and administrators.</p> <p>32. Same—Persons acting in fiduciary capacity—Trustees and guardians.</p> <p>33. Same—Persons acting in representative capacity—Agent.</p> <p>34. Same—Persons acting in representative capacity—Partners.</p> <p>35. Same—Persons acting in representative capacity—Private corporations.</p> <p>36. Same—Persons acting in representative capacity—Municipal or public corporations.</p> <p>37. Same—Persons acting in representative capacity—Public officers.</p> |
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§ 22. **Parties and their capacity—In general.** In this chapter we shall consider parties to bills, notes and checks and the capacity of such parties. It may be stated that the general rules governing contracts will apply as to the capacity of persons to make and indorse bills, notes and checks,<sup>1</sup> and also as to the effect of the various forms of legal disability, as infancy, insanity, coverture and alien enmity, upon the rights of the parties. Paper executed by persons who are under any of the above disabilities, is either void or voidable. Others, as partnerships, corporations, and agents, who have capacity to make simple contracts also have capacity, to certain extent, to execute and transfer bills, notes and checks. We shall consider in turn the capacity of all these parties to execute negotiable instruments, or bills, notes and checks.

<sup>1</sup> Bromwich v. Loyd, Lutw. 1582; Sarsfield v. Witherley, 2 Vent. 292. Hodges v. Steward, 12 Mod. 36;

For convenience, parties and their capacity may be considered under two main divisions or heads, viz., 1st—those parties partially or wholly incapacitated, and 2nd—those parties not incapacitated.

**§ 23. Parties partially or wholly incapacitated—In general.** Parties partially or wholly incapacitated may be classified either as parties lacking mental capacity, such as infants, lunatics, drunkards and spendthrifts; or as persons lacking legal capacity other than mental, such as married women, the bankrupt or insolvent payee and alien enemies.

**§ 24. Same—Persons lacking mental capacity—Infants.** There is a difference of opinion in the decisions of the various states as to whether a negotiable instrument made, accepted or indorsed by an infant, that is, by one under twenty-one years of age, is absolutely void or is merely voidable.<sup>2</sup> The better opinion is that such note is voidable and may be ratified by the minor after reaching his majority.<sup>3</sup> But before reaching his majority and ratifying the instrument the infant cannot bind himself absolutely as drawer, indorser, acceptor or maker of a bill of exchange or promissory note.<sup>4</sup>

If an instrument is given by an infant for necessities, the better opinion is that the instrument is voidable and if repudiated by the infant,<sup>5</sup> he may be recovered against not on the note but for the value of the articles supplied, or service rendered, that is, in actions known technically as "*quantum valebat*" and "*quantum meruit*," respectively.<sup>6</sup>

A note, bill or check made payable to an infant is enforceable by the infant against the maker or acceptor, as the privilege of

<sup>2</sup> Tyler v. Gallop, 68 Mich. 185, 35 N. W. 902, 13 Am. St. Rep. 336; Little v. Duncan, 9 Rich. (S. C.) 55, 64 Am. Dec. 700; Askey v. Williams, 74 Tex. 294, 11 S. W. 1101, 5 L. R. A. 176. See note 18 Am. St. Rep. 606-611.

*Contra*, Wentworth v. Wentworth, 5 N. H. 410; McMim v. Richards, 6 Yerg. (Tenn.) 9.

<sup>3</sup> Heady v. Boden, 4 Ind. App. 475, 30 N. E. 1119; Whitney v. Dutch, 14 Mass. 457, 7 Am. Dec. 229; Minock v. Shortridge, 21 Mich. 304.

<sup>4</sup> Fetrow v. Wiseman, 40 Ind. 148; Minock v. Shortridge, 21

Mich. 304; Little v. Duncan, 9 Rich. 55, 64 Am. Dec. 700; Stern v. Meikleham, 56 Hun (N. Y.) 475, 10 N. Y. S. 216.

<sup>5</sup> Morton v. Steward, 5 Ill. App. 533; McCrillis v. How, 3 N. H. 348; Swasey v. Vanderheyden, 10 Johns. (N. Y.) 33.

But see, Earle v. Reed, 10 Metc. (Mass.) 387; Aaron v. Harley, 6 Rich. (S. C.) 26; Bradley v. Pratt, 23 Vt. 378.

<sup>6</sup> Guthrie v. Morris, 22 Ark. 411; Munson v. Washband, 31 Conn. 303, 83 Am. Dec. 151; Askey v. Williams, 74 Tex. 294, 11 S. W. 1101, 5 L. R. A. 176.

avoiding the contract lies with the infant and is for his benefit.<sup>7</sup> The one who pays should use due care in paying lest payment should be made to the guardian rather than to the infant.

An infant's indorsement, that is, his writing his name on the back and making the instrument payable to some one else, is voidable, not absolutely void. He may choose to disaffirm it, and by returning the consideration received, compel the maker or acceptor to pay him, although the money has already been paid to the indorsee or the one to whom the infant indorses it; or the infant may disaffirm the indorsement, notify all the parties, and if payment has not been made to the indorsee, destroy his title to the bill or note.<sup>8</sup>

In case of the indorsement of the note or bill by the infant payee, the maker or acceptor is liable, as the fact that they make the instrument payable to an infant estops or precludes them from denying his capacity to indorse the instrument. It would be absurd to allow one who has made an instrument payable to an infant, or his order, to refuse to pay the money to one to whom the infant had ordered it to be paid, in distinct violation of his promise.<sup>9</sup>

The Negotiable Instruments Law provides:<sup>10</sup>

*"The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon."*

The above section of the law does not take away the infant's right to disaffirm his indorsement and recover the instrument even against an innocent indorsee for value.<sup>10a</sup>

As the instrument of an infant is not absolutely void, but voidable only at his election, it follows that, after reaching full age, the then adult may ratify and affirm his bill or note executed while he was an infant. Unless a written ratification is required by statute, a verbal ratification is sufficient. In some states by statute it is required that this ratification be in writing.

<sup>7</sup> Garner v. Cook, 30 Ind. 331; Duty v. Brownfield, 1 Pa. St. 497; Grey v. Cooper, 3 Dougl. 65; Bunker's Cases, 331.

<sup>8</sup> Hardy v. Waters, 38 Me. 450; Nightingale v. Withington, 15 Mass. 272, 8 Am. Dec. 101; Story Prom. Notes, § 80.

<sup>9</sup> Frazier v. Massey, 14 Ind. 382,

Hardy v. Waters, 38 Me. 450; Nightingale v. Withington, 15 Mass. 272, 8 Am. Dec. 101.

<sup>10</sup> Neg. Inst. Law, § 22, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>10a</sup> Murray v. Thompson, 136 Tenn. 118, 188 S. W. 578, L. R. A. 1917 B, 1172.

§ 25. Same—Persons lacking mental capacity—Lunatics and imbeciles. The bill or note of a lunatic, imbecile, idiot, or other persons *non compos mentis*, from age or personal infirmity, is, subject to the conditions set out below, not binding on such persons during the period of incompetency.<sup>11</sup> There is a conflict of authority in the various jurisdictions as to whether one ignorant of the incompetency of a person with whom he contracts will be protected. The better opinion would seem to be that he will be protected if he has acted in good faith and taken no undue advantage of the afflicted person.<sup>12</sup>

That is, he will be protected if the note was obtained or the contract entered into in good faith, in ignorance of the want of capacity of the insane person to contract, and for a full and adequate consideration of money paid, or property delivered to him.

As to whether a bill or note given for necessities binds one under such incompetency, the more just rule would seem to be to place such an instrument upon the same footing as the bill or note of an infant given for necessities, as discussed in the previous section.<sup>13</sup>

Contracts with a person who has been adjudged judicially to be insane and for whom a committee or guardian has been appointed to care for his interests are not valid and cannot be enforced if disaffirmed or avoided. If the insanity of a party to a contract is known, the contract is absolutely void.<sup>14</sup>

<sup>11</sup> 15 Am. Dec. 361 note; Mussleman v. Cravens, 47 Ind. 1; Ellars v. Mossbarger, 9 Ill. App. 122; Hale v. Browne, 11 Ala. 87; Milligan v. Pollard, 112 Ala. 465, 20 So. 620; Burke v. Allen, 29 N. H. 106, 61 Am. Dec. 642; Carrier v. Sears, 4 Allen (Mass.) 336, 81 Am. Dec. 707; American Trust Co. v. Boone, 102 Ga. 202, 29 S. E. 182, 66 Am. St. Rep. 167, 40 L. R. A. 250. See note 11 Am. St. Rep. 320.

<sup>12</sup> Memphis Nat. Bank v. Sneed, 97 Tenn. 120, 36 S. W. 716, 56 Am. St. Rep. 788, 34 L. R. A. 274; Snyder v. Lanback, 7 Wkly. Notes Cases (Pa.) 464 note; Mussleman v. Cravens, 47 Ind. 1; Hosler v. Beard, 54 Ohio St. Rep. 398, 43 N. E. 1040, 56 Am. St. Rep. 720, 35 L. R. A. 161.

*Contra*, American Trust Co. v.

Boone, 102 Ga. 202, 29 S. E. 182, 66 Am. St. Rep. 167, 40 L. R. A. 250; Am. Dec. 372.

Seaver v. Phelps, 11 Pick. 304, 22  
<sup>13</sup> Navasota First Nat. Bank v. McGinty, 29 Tex. Civ. App. 539, 69 S. W. 495; *In re Renz*, 79 Mich. 216, 44 N. W. 598; Hosler v. Beard, 54 Ohio St. Rep. 398, 43 N. E. 1040, 56 Am. St. Rep. 720, 35 L. R. A. 161.

*Contra*, Milligan v. Pollard, 112 Ala. 465, 20 So. 620; Davis v. Tarver, 65 Ala. 98; McKee v. Purnell, 18 Ky. L. Rep. 879, 38 S. W. 705.

<sup>14</sup> American Trust, etc., Co. v. Boone, 102 Ga. 202, 29 S. E. 182, 66 Am. St. Rep. 167, 40 L. R. A. 250; Hughes v. Jones, 116 N. Y. 67, 22 N. E. 446, 15 Am. St. Rep. 386, 5 L. R. A. 637; Schramek v. Shepeck, 120 Wis. 643, 98 N. W.

Such persons of unsound mind may be payees of bills or notes and may compel payment to them or a return of the consideration. As payees they may indorse the paper and the indorsee may recover of the maker or acceptor, and the latter are estopped from denying the payee's capacity to indorse if the payee was incompetent when the bill or note was executed.<sup>15</sup>

It has been held, that the insanity of the indorser may be pleaded by the maker of a note in an action brought against him by the indorsee.<sup>16</sup> But the better doctrine is as above stated that the contract of indorsement by an insane person is voidable and not void, and such contract is binding upon all prior parties to the instrument who are of sound mind.<sup>17</sup> No action will lie on an accommodation indorsement of a promissory note by a lunatic, even in favor of an innocent holder.<sup>18</sup>

There is a presumption that every person is of sound mind and capable in that respect of contracting a liability on a bill, note or check until the contrary appears.<sup>19</sup> If a person contracts such a liability with a third person whom he knows to be insane, it is not valid, for unsoundness of mind would be a good defense, if it could be shown that the defendant was not of capacity and the plaintiff knew it.<sup>20</sup> But where a person as above in good faith contracts with another, without notice of any such insanity as affects his capacity to contract, the ordinary presumption of sanity prevails, and the contract is valid, unless undue advantage was taken of the lunatic.<sup>21</sup>

**§ 26. Same—Persons lacking mental capacity—Drunkards and spendthrifts.** If a person became so drunk as to be deprived of understanding and reason and in such a condition signs a bill or note, either as maker, drawer, indorser or acceptor, the

213; *Coleman v. Farar*, 112 Mo. 54, 20 S. W. 441.

But see, *Kimball v. Bumgardner*, 16 Ohio Cir. Ct. 587, 9 Ohio Civ. Dec. 409.

<sup>15</sup> *Carrier v. Sears*, 4 Allen (Mass.) 336, 81 Am. Dec. 707.

<sup>16</sup> *Walker v. Winn* (Ala. 1905), 39 So. 12; *Burke v. Allen*, 29 N. H. 106, 61 Am. Dec. 642.

<sup>17</sup> *Carrier v. Sears*, 4 Allen (Mass.) 336, 81 Am. Dec. 707.

<sup>18</sup> *Van Patton v. Beal*, 46 Ia. 62; *Edwards v. Davenport*, 20 Fed. 756; *Smith v. Mirsack*, 6 C. B. 486.

But see, *Memphis Nat. Bank v. Sneed*, 97 Tenn. 120, 36 S. W. 716,

56 Am. St. Rep. 788, 34 L. R. A. 274; *Bechtel's Appeal*, 133 Pa. St. 367, 19 Atl. 412.

<sup>19</sup> *Jackson v. Van Dusen*, 5 Johns. 144; 1 *Parsons on Notes and Bills* 150.

<sup>20</sup> *Hannahs v. Sheldon*, 20 Mich. 278; *Lincoln v. Buckmaster*, 32 Vt. 652; *Hughes v. Jones*, 116 N. Y. 67, 22 N. E. 446, 15 Am. St. Rep. 386, 5 L. R. A. 637.

<sup>21</sup> *Mutual Life Ins. Co. v. Hunt*, 79 N. Y. 541; *Hosler v. Beard*, 54 Ohio St. Rep. 398, 43 N. E. 1040, 56 Am. St. Rep. 720, 35 L. R. A. 161; *Behrens v. McKenzie*, 23 Ia. 343.

instrument as to him is voidable.<sup>22</sup> He may ratify the instrument when he becomes sober and be bound by it.<sup>23</sup> Many courts hold that drunkenness, unless procured by the payee's connivance, must be habitual and amount practically to mental unsoundness in order that it may be set up as a defense on an instrument.<sup>24</sup> The spendthrift, as in cases of infancy, lunacy, or drunkenness, may be placed under the care of a guardian.<sup>25</sup> A person who has been deprived of his property for any of the above causes is considered incompetent to make a negotiable instrument. So likewise a spendthrift when placed under the care of a guardian is held to be incompetent to make a negotiable instrument. By the weight of authority when under the care of a guardian he cannot indorse a note made payable to himself, for if he is held to be incompetent to make a negotiable instrument in the first instance he could not consistently be held to incur any liability by indorsement.<sup>26</sup>

**§ 27. Same—Persons lacking legal capacity other than mental—Married women.** Wherever the common law prevails, a married woman cannot bind herself as a party in any way to a bill or note and such instruments signed by her are absolutely void. There were a few exceptions to this, however, at common law, as where the husband was an alien enemy and the like. In those states where the common law has been unchanged by legislative enactment the common law rules still prevail; if a special or limited power to contract is given them, they are still deemed *prima facie* unable to contract, and the burden is on the persons relying on the validity of their contracts to bring them within the rule set down in the legislative enactment.<sup>27</sup>

Modern statutes in most of the states enlarge the capacity of a married woman as to the making of contracts. The general scope of this remedial legislation is either to give her power to contract the same as if single or contract as if single with reference to or for the benefit of her separate estate and in either case her

<sup>22</sup> *Jenners v. Howard*, 6 Blackfd. 240; *Conant v. Jackson*, 16 Vt. 335; *Miller v. Finley*, 26 Mich. 249; *Gore v. Gibson*, 13 Mees & W. 623; *State Bank v. McCoy*, 69 Pa. St. 204. See note 107 Am. St. Rep. 545.

<sup>23</sup> *Calkins v. Fry*, 35 Conn. 170; *Joest v. Williams*, 42 Ind. 565; *Mathews v. Baxter*, L. R. 8 Exch. 132.

But see, *Berkley v. Canon*, 4 Rich. 136.

<sup>24</sup> *State Bank v. McCoy*, 69 Pa.

St. 204, 8 Am. Rep. 246; *Hale v. Brown*, 11 Ala. 87; *Smith v. Williamson*, 8 Utah 219.

<sup>25</sup> *Manson v. Felton*, 13 Pick. 206; *Lynch v. Dodge*, 130 Mass. 458.

<sup>26</sup> *Lynch v. Dodge*, 130 Mass. 458.

<sup>27</sup> *Kenworthy v. Sawyer*, 125 Mass. 28; *Kenton Ins. Co. v. McClelland*, 43 Mich. 564; *Cornings v. Leedy*, 114 Mo. 454, 21 S. W. 804; *Connor v. Martin*, 1 Strange, 516. See note 3 L. R. A. (N. S.) 145.

power to execute negotiable instruments would be the same as in case of other contracts. In some states she is forbidden to execute such instruments as surety and her engagements as surety are absolutely void and cannot be ratified by her after coverture is terminated, either by death or divorce.<sup>28</sup>

**§ 28. Same—Persons lacking legal capacity other than mental—Bankrupt or insolvent payee.** A bankrupt cannot indorse a bill or note, since all his bills and notes receivable are collectible only by the assignee or trustee in bankruptcy. Any indorsements which he attempts to make are absolutely void. The one exception to the above rule is that when the bankrupt shall have sold the paper before his bankruptcy, the title obtained by the purchaser will be superior to that of the assignee or trustee although the indorsement was made after the bankruptcy.<sup>29</sup>

**§ 29. Same—Persons lacking legal capacity other than mental—Alien enemies.** In times of peace aliens may contract with each other as other persons may but in times of war alien enemies cannot contract with each other when it necessitates communication across the line of hostilities; hence they cannot execute negotiable paper which is binding either during or after the close of hostilities. Alien enemies are those who are subjects of different sovereignties which are at war with each other. In some cases, war simply suspends the contractual powers of aliens and does not terminate them. But in no case will communications or transfers of property or money across the line of hostilities be permitted.<sup>30</sup>

**§ 30. Parties not incapacitated—In general.** Parties not incapacitated may be classified as, 1st, those acting in a fiduciary capacity, such as executors, administrators, trustees, guardians, committees, and the like; 2nd, those acting in a representative

<sup>28</sup> The law of the place determines the capacity of married women to enter into contracts. *Bell v. Packard*, 69 Me. 105, 31 Am. Rep. 251; *Bowles v. Field*, 83 Fed. 886; *Robinson v. Queen*, 87 Tenn. 445, 11 S. W. 38, 10 Am. St. Rep. 690, 3 L. R. A. 214.

But in La., and generally under the civil law, the wife's domicile determines her capacity. *Garnier v. Poydras*, 13 La. 177.

<sup>29</sup> *Hersey v. Elliot*, 67 Me. 526, 24 Am. Rep. 50; *Hughes v. Nelson*,

28 N. J. Eq. (2 Stew.) 547; *First Nat. Bank v. Gish*, 72 Pa. St. 13; *Jerome v. McCarter*, 94 U. S. 734.

<sup>30</sup> *Woods v. Wilder*, 43 N. Y. 164, 3 Am. Rep. 684; *Craft v. U. S.*, 12 Ct. Cl. 178; *Billgerry v. Branch*, 19 Gratt. (Va.) 393, 100 Am. Dec. 679; *Ledoux v. Buhler*, 21 La. Ann. 130; *Russell v. Russell*, 1 MacArthur (D. C.) 263.

As to transfer in this country of a note by an alien enemy, see *Morris v. Poillon*, 50 Ala. 403; *Morrison v. Lovell*, 4 W. Va. 346.



capacity as agents, partners, private corporations, municipal or public corporations and public officers.

**§ 31. Same—Persons acting in fiduciary capacity—Executors and administrators.** In general, the legal representatives of decedents, known as executors and administrators succeed to all the interests and rights of such decedents. The rights and remedies attaching to all their contracts and instruments, whether negotiable or not, pass to the executors and administrators. The assets of the decedent's estate also pass to these legal representatives. But these rules are subject to the exception that all those rights and obligations arising from the decedent's contracts which are so personal in their character that no one could take his place in the matter, do not pass to his executors or administrators.

An executor or administrator cannot make or indorse a promissory note so as to bind the estate of the decedent. By his contact he can only bind himself and he can in no way bind the estate under his control except as to the debts contracted by the decedent himself. In case he should make a promissory note or accept a bill of exchange and it should be negotiated before due, the executor has created a personal liability.

The fact that the executor in making the instrument describes himself as executor does not give him capacity to bind the estate.<sup>31</sup> In case a promissory note or bill of exchange which is made payable to the deceased or his order comes into the hands of the executor or administrator there is a conflict of authority as to whether either of them may indorse in such a manner as to preclude a personal liability.<sup>32</sup> In case the note has been indorsed by the payee before his death it is necessary that the note be again indorsed in order to pass title.

<sup>31</sup> *Rittenhouse v. Ammerman*, 64 Mo. 197, 27 Am. Rep. 215; *Funkenburg v. Gorham*, 46 Ga. 296; *Walker v. Patterson*, 36 Me. 273; *Gregory v. Leigh*, 33 Tex. 813; *Sneed v. Coleman*, 7 Gratt. 300.

As to liability of administrator or executor as acceptor of bill drawn against him as such, see *Tassey v. Church*, 4 Watts & S. 141, 39 Am. Dec. 65.

But see, *Schmittler v. Simon*, 114 N. Y. 176, 21 N. E. 162.

<sup>32</sup> *Wooley v. Lyon*, 117 Ill. 244, 6 N. E. 867, 57 Am. Rep. 867; *Wade v. Wade*, 36 Tex. 529; *Campbell v.*

*Brown*, 64 Ia. 425, 20 N. W. 745, 52 Am. Rep. 446; *Bogert v. Hertell*, 40 Hill 492.

But see, *Smith v. Whiting*, 9 Mass. 334; *Sanders v. Blain*, 6 J. J. Marsh 446, 22 Am. Dec. 86.

Must indorse without recourse. *Foster v. Fuller*, 6 Mass. 58; *Livingston v. Gaussen*, 21 La. Ann. 286, 99 Am. Dec. 731.

As to power of a foreign executor to transfer bill see, *Dial v. Gary*, 14 S. C. 573, 37 Am. Rep. 737; *Stearns v. Burnham*, 5 Me. 261, 17 Am. Dec. 228.

**§ 32. Same—Persons acting in fiduciary capacity—Trustees and guardians.** Trustees and guardians have capacity to transfer instruments but they can incur only a personal liability. An estate is committed to them and they have capacity to hold it and keep it intact, not for themselves but for others. They have such powers as are necessary for them to exercise in carrying into force and effect the estate which they control. If a trustee or guardian executes a bill or note and describes himself as such he does not bind the estate but incurs only a personal liability.<sup>33</sup>

Trustees and guardians, like executors and administrators, cannot bind the estate under their control, or the persons for whom or for whose benefit they act, by their promissory note, or by the acceptance of a bill of exchange; to give any validity to such a note or bill they must be deemed personally bound as makers or acceptors.

It has been held that a guardian may indorse a note or bill of exchange payable to his order as guardian so as to pass title, the reasoning being upon the theory that the words "as guardian" are merely descriptive of the payee.<sup>34</sup> But the better doctrine seems to be that if the indorsee takes such an instrument, the words "as guardian" should be sufficient to put him on his guard and if the transfer was in fraud of the trust the indorsee should be held personally liable.<sup>35</sup>

**§ 33. Same—Persons acting in representative capacity—Agent.** All persons who are themselves competent to become parties to a negotiable contract, in their own individual right, can do so through the instrumentality of an agent.<sup>36</sup> It is not necessary that the agent himself should be competent to make a contract, as he is the mere instrument of the contracting party, who, of course, must be capable.<sup>37</sup>

The best mode for an agent to sign or indorse a bill or note for his principal, so that it may clearly appear that he is the mere scribe, as it were, who writes for another, is as follows:

<sup>33</sup> Towne v. Rice, 122 Mass. 67; McGavock v. Whitfield, 45 Miss. 452; Shiff v. Shiff, 20 La. Ann. 269; Conner v. Clarke, 12 Cal. 168.

But see, Gandy v. Babbitt, 56 Ga. 640.

<sup>34</sup> Westmoreland v. Foster, 60 Ala. 448; Thornton v. Rankin, 19 Mo. 193; Zellner v. Cleveland, 60 Ga. 633; Jenkins v. Sherman, 77 Miss. 884, 28 So. 726; McKinney v. Beeson, 14 La. 254.

<sup>35</sup> Shaw v. Spencer, 100 Mass. 382, 97 Am. Dec. 107; Smith v. Dibrell, 31 Tex. 239, 98 Am. Dec. 526; Nickerson v. Gilliam, 29 Mo. 456, 77 Am. Dec. 583.

<sup>36</sup> Lea v. Bringier, 19 La. Ann. 197; Ferguson v. Morris, 67 Ala. 389.

<sup>37</sup> Governor v. Daily, 14 Ala. 469; Felker v. Emerson, 16 Vt. 653, 42 Am. Dec. 532.

"X, by his attorney or agent, Y;" or, "X, by Y, agent;" or, "Y, for X;" or, "Y, agent for X." It is held competent also for the agent to sign simply the principal's name, and to show his authority to do so by other evidence.<sup>38</sup> If the agent sign a note with his own name, and discloses no principal, he is personally bound. And though he write "agent" after his name, he is still bound personally unless the name of the principal can be found within the four corners of the instrument.<sup>39</sup>

The Negotiable Instruments Law provides:

*"Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability."*<sup>40</sup>

Thus one is not relieved from liability by adding the descriptive term "trustee," "administrator," "guardian," "agent" "secretary" or any such term.<sup>40a</sup> Unless the promise purports to be by the corporation, it is that of the persons who subscribe to it. Unless the language creates or fairly implies the undertaking of the corporation, or if the purpose is equivocal, the obligation is that of its apparent makers.<sup>40b</sup>

*"A signature by 'procuration' operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority."*<sup>41</sup>

The terms "per procuration" and "per proc" are seldom, if ever, used in this country. They have a special technical meaning and are an express intimation of a special and limited author-

<sup>38</sup> First Nat. Bank v. Gay, 63 Mo. 33, 21 Am. Rep. 430; Mechanics' Bank v. Bank of Columbia, 5 Wheat. 326.

<sup>39</sup> Bryson v. Lucas, 84 N. C. 286, 37 Am. Rep. 634; Rodger Williams Bank v. Groton Mfg. Co., 16 R. I. 504, 17 Atl. 170; Penn. Mutual Life Ins. Co. v. Conoughy, 54 Neb. 124, 74 N. W. 422; Peterson v. Honan, 44 Minn. 166, 46 N. W. 303, 20 Am. St. Rep. 564.

*Contra*, Keidan v. Winegar, 95 Mich. 430. This decision affirmed by statute.

May be authorized by parol. Odd Fellows v. Bank, 42 Mich. 461;

Coy v. Stiner, 53 Mich. 42; Handy-side v. Cameron, 21 Ill. 588, 74 Am. Dec. 119.

<sup>40</sup> Negotiable Instruments Law, § 20, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>40a</sup> Sumwalt v. Rigsley, 20 Md. 107; Daniel v. Glidden, 38 Wash. 556.

<sup>40b</sup> Casco National Bank v. Clark, 139 N. Y. 307.

<sup>41</sup> Negotiable Instruments Law, § 21, where all cases directly or indirectly bearing upon or citing the Law are grouped.

ity; and a person taking a bill so drawn, accepted, or indorsed, is bound to inquire into the extent of the authority.

Where an agent accepts or indorses "per proc." the taker of a bill or note so accepted or indorsed is bound to inquire as to the extent of the agent's authority. But when the agent has the authority to do the act in question, his abuse of such authority will not affect a *bona fide holder for value*.<sup>41a</sup>

The power to make or indorse negotiable paper must be expressly granted or given by the principal. Thus the general authority bestowed upon an agent to transact the business of his principal and to receive payment of and to discharge debts, will not imply an authority to accept or indorse bills so as to charge the principal. A power expressly granted is subject to strict interpretation, and must be performed in strict conformity with the terms thereof.<sup>42</sup> Thus it has been decided that a negotiable instrument differing in amount from that authorized, or made payable at a different time will not bind the principal.<sup>43</sup> The implied authority of an agent to bind his principal by a bill or note is upheld in some cases, as where the agent has formerly made a note or drawn a bill for his principal, and such principal has recognized his acts.<sup>44</sup> It is provided in the Negotiable Instrument Law that: "*The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for the purpose, and the authority of the agent may be established as in other cases of agency.*"<sup>45</sup>

The Kentucky Act requires the agent to be duly authorized in writing but it is held that the authority to execute a non-negotiable instrument is not required to be in writing.<sup>45a</sup>

The above section permits proof of the ostensible authority of the agent to act for a corporation in issuing negotiable paper;

<sup>41a</sup> Bryant, Powis & Bryant v. Quebec Bank (1893) (England), A. C. 170, 179.

<sup>42</sup> Handyside v. Cameron, 21 Ill. 588, 74 Am. Dec. 119; Humphreys v. Wilson, 43 Miss. 328; Temple v. Pomroy, 4 Grey 128; Ryhiner v. Feickert, 92 Ill. 305, 34 Am. Rep. 130.

But see, Nutting v. Sloan, 59 Ga. 392.

<sup>43</sup> King v. Sparks, 77 Ga. 285; Blackwell v. Ketcham, 53 Ind. 184.

<sup>44</sup> Stroh v. Hinchman, 37 Mich. 490; Hammond v. Varian, 54 N.

Y. 398; Greenfield Bank v. Crafts 2 Allen, 269.

<sup>45</sup> Neg. Inst. Law, § 19, where cases are collected. Odd Fellows v. Bank, 42 Mich. 461; Sager v. Tupper, 42 Mich. 605; Kennedy v. Graham, adm., 9 Ind. App. 624, 35 N. E. 925, 37 N. E. 25.

In case of partnership plaintiff must show authorization in case it is disputed. Gooding v. Underwood, 89 Mich. 189.

<sup>45a</sup> Finley v. Smith, 165 Ky. 445, 177 S. W. 262, L. R. A. 1915 F, 777.

but what shall constitute sufficient proof of such authority is left to the common law.<sup>45a</sup>

A general authority to an agent is presumed to continue until its revocation is generally known. And if A is the agent of B to draw bills in his name, B will be liable as drawer to ignorant indorsees, who had no knowledge of the change in the relationship of the parties, or of the revocation of the agency.<sup>46</sup>

It should be noted that officers of the government and other public corporations are not held to the same rule of agency by which in exceeding their authority they bind themselves; everyone having dealings with a public officer is supposed to know the legal limitations of his agency, so that when a public officer in innocent mistake of the law makes an unauthorized contract in the name of the public corporation neither he nor the corporation is bound.<sup>47</sup>

The officer of a public corporation acting in his official capacity must use care that his official character appears on the face of the instrument, and it is held that merely adding his official designation to his signature will relieve him of personal liability.

Below is a form of signature by an agent.

SIGNATURE BY AN AGENT.

\$100.00

Minneapolis, Minn., July 1, 1921.

Thirty days after date I promise to pay to the order of  
Earl Matlock-----

One hundred-----Dollars

DONALD S. MORRIS,

By NATHAN C. REDDING,

Agent.

**§ 34. Same—Persons acting in representative capacity—Partners.** Partners only have implied power to make and negotiate negotiable instruments in case the firm is a trading partnership, or one whose business necessitates the use of negotiable paper. If it is in the nature and scope of the firm's business

<sup>45a</sup> Grant County State Bank v. N. W. Land Co., 28 N. D. 479, 150 N. W. 736.

<sup>46</sup> Story on Agency, §§ 470-473.

<sup>47</sup> The Floyd Acceptances, 7 Wall. 666; Walker v. Christian, 21 Gratt. 297; Hodgson v. Dexter, 1 Cranch. 345.

to issue such paper, any one or more partners may bind the firm by executing or accepting a note or bill in a transaction within such scope even though the proceeds are for his own benefit if the holder of the paper was not a party to the fraud.<sup>48</sup> But if money is loaned to a firm on the sole credit of one of its members, and a note is given therefor signed by such member, the obligation is that of the individual member and not that of the firm, and the fact that the proceeds thereof are used for the benefit of the firm is not material.

As a general rule a secret, silent, or dormant partner, whose name does not appear, is bound by notes made or bills drawn, accepted, or indorsed by his co-partners in the name of the firm, both when they are negotiated for the benefit and when given under such circumstances as to bind the firm.

After the dissolution of a partnership, no partner has any authority to bind any former partner by giving a promissory note in the name of the firm; the act of dissolution is a revocation of all authority to act for and contract in the name of the partnership.<sup>49</sup> As between the firm and the world, the authority of the ex-partners to bind each other by bills or notes within the scope of the former partnership continues until a sufficient notice of the dissolution is duly given.

But notice is not necessary when a secret, silent, or dormant partner retires, for he has not been held out as a member of the firm. If, however, such partner is known to certain individuals to have been a partner, he must notify them of his retirement to escape liability for future acts of the firm.<sup>50</sup>

The proper form of signing the firm name to any contract made by a partner is to write the firm name and nothing else. It is permissible but unnecessary to write the name of the partner after the firm signature, thus: "Smith & Brown, per William J. Brown."

As to accommodation paper, which term will be explained later, the following rule has been laid down: No one member of a firm can bind it, without the consent of all its members, by signing the co-partnership name as drawer, maker, acceptor, or indorser

<sup>48</sup> *Bank v. Alden*, 129 U. S. 373; *Fulton v. Loughlin*, 118 Ind. 286; *Carrier v. Cameron*, 31 Mich. 373; *Hayward v. Gray*, 12 Gray 453; *Spaulding v. Kelly*, 50 N. Y. S. 244; *Towle v. Dunham*, 76 Mich. 367. See note 48 Am. St. Rep. 438.

<sup>49</sup> *Humphries v. Chastain*, 5 Ga. 166, 48 Am. Dec. 247; *Commercial Bank v. Perry*, 10 Rob. (La.) 61,

43 Am. Dec. 168; *Hurst v. Hill*, 8 Md. 399, 63 Am. Dec. 705; *Wilson v. Forder*, 20 Ohio St. 95, 5 Am. Rep. 627.

<sup>50</sup> *Pitkin v. Beufer*, 50 Kan. 108, 34 Am. St. Rep. 110; *Baptist Book Concern v. Carswell*, Tex. Civil Appeals, 1898, 46 S. W. 858; *Nussbaumer v. Becker*, 87 Ill. 281, 29 Am. Rep. 53.

of negotiable paper for his private accommodation or for the accommodation of a third party, and this for the obvious reason that such a transaction is not within the scope of the co-partnership business, unless expressly or impliedly made so and that it would ordinarily be without authority and in fraud of the firm.<sup>51</sup>

**§ 35. Same—Persons acting in representative capacity—Private corporations.** The power of private corporations to become parties to bills of exchange or promissory notes is co-extensive with their power to contract debts.<sup>52</sup> Whenever a corporation is authorized to contract a debt it may draw a bill or give a note in payment of it. Every corporation, therefore, may become a party to bills or notes for some purposes. Thus, a mere religious corporation may need fuel for its rooms, and as an economical measure may buy a cargo of coal, and give its note for it; and such a note would undoubtedly be valid.

The cashier of a bank, the president of a corporation or any other administrative officer, as secretary or treasurer, may be expressly authorized to issue negotiable paper for the corporation, or he may have such power from implication by reason of having previously exercised the power.<sup>53</sup>

The Negotiable Instruments Law provides as follows: "*Where an instrument is drawn or indorsed to a person as 'cashier' or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.*"<sup>53a</sup>

The directors of a corporation are in control of its affairs and have the management of its business, subject to the restrictions and limitations imposed upon them by the articles of incorporation, by-laws and statutes. If the issuing of commercial paper is within the power of the corporation itself, such paper may in all cases be executed by the directors acting as a board. So the sole manager of a corporation intrusted by the officers with its entire conduct may bind it by executing a note in its name, especially where the officers had previously acquiesced in his execution of similar notes.<sup>54</sup>

<sup>51</sup> *Hendric v. Berkowitz*, 37 Cal. 113, 99 Am. Dec. 251; *Chenowith v. Chamberlin*, 6 B. Mon. (Ky.) 60, 43 Am. Dec. 145; *Fort Madison Bank v. Alden*, 129 U. S. 381.

<sup>52</sup> *Mott v. Hicks*, 1 Cow. (N. Y.) 513, 13 Am. Dec. 550; *Auerbach v. Le Sueur Mill Co.*, 28 Minn. 291, 41 Am. Rep. 285; *Olcott v. Tioga R.*

*Co.*, 27 N. Y. 546, 84 Am. Dec. 298.

<sup>53</sup> *Odd Fellows v. Sturgis First Nat. Bank*, 42 Mich. 461; *Olcott v. Tioga R. Co.*, 27 N. Y. 546, 84 Am. Dec. 298.

<sup>53a</sup> *Neg. Inst. Law*, § 42, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>54</sup> *American Exch. Nat. Bank v.*

The power to receive negotiable paper must necessarily be accompanied by a power to transfer it to a third person, in the ordinary course of its business.<sup>55</sup> Many of the same rules which control indorsement and transfer of negotiable paper by agents are also applicable to officers and agents of a corporation.

We have already seen under the section pertaining to agents as parties (§ 33) the proper form of making the signature of a corporation by an agent or officer. In making such paper it is generally held that the corporation may dispense with the use of its corporate seal.

Below is a form of signature:

CORPORATE SIGNATURE.

\$250.00

St. Paul, Minn., July 1, 1921.

Sixty days after date The Acme Company promises  
to pay to the order of Joseph Thompson-----  
Two hundred fifty-----Dollars  
at First National Bank.

Valued received.

THE ACME COMPANY.

By JAMES STARR,  
Treasurer.

**§ 36. Same—Persons acting in representative capacity—Municipal or public corporations.** As to municipal or public corporations, such as cities, towns and other like corporations created by the government as governmental agencies, it is held that there is no doubt that they may have the power conferred on them to execute negotiable paper, but the better opinion is that such power does not exist unless expressed or clearly implied. And the extent of the power may be limited by statute, as well as the existence of the power.<sup>56</sup>

Oregon Pottery Co., 55 Fed. Rep. 265; Credit Co. v. Howe Mach. Co., 54 Conn. 357, 1 Am. St. Rep. 133.

<sup>55</sup> McIntire v. Preston, 10 Ill. 48, 48 Am. Dec. 321; Goodrich v. Reynolds, 31 Ill. 490, 83 Am. Dec. 240; Buckley v. Briggs, 30 Mo. 452.

<sup>56</sup> Claiborne Co. v. Brooks, 111 U. S. 400; Newgrass v. New Orleans, 42 La. Ann. 163, 21 Am. St. Rep. 368; Knopp v. Hoboken, 39 N. J. L. 394; Merrill v. Monticello, 138 U. S. 673; State v. Smith, 47 N. J. L. 473.



**§ 37. Same—Persons acting in representative capacity—Public officers.** A negotiable instrument may be drawn payable to the order of "*the holder of an office for the time being.*"<sup>57</sup> This provision of the law was intended to declare the general rule that where an instrument was payable to a person holding a position of a representative character that he may be regarded as the payee of the instrument in behalf of all the persons whom he represents.

When public officers in good faith contract with parties having full knowledge of the extent of their authority, or who have equal means of knowledge with themselves, they do not become individually liable unless the intent to incur a personal responsibility is clearly expressed, although they may through ignorance of the law have exceeded their authority. This should be the rule in case of the making, drawing, accepting, and indorsing of negotiable instruments by public officers, but the cases upon this question are not all in accord with the application of this rule to such instruments.<sup>58</sup>

<sup>57</sup> Neg. Inst. Law, § 8, sub. 6, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>58</sup> Walker v. Christian, 21 Gratt. 297; Hodgson v. Dexter, 1 Cranch 345.

## CHAPTER VI.

### FORMAL AND ESSENTIAL REQUISITES.

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|--|---|
| § 38. Definition of promissory note.               | § 49. Must be certain as to time of payment.          |
| 39. Definition of bill of exchange.                | 50. As to place of payment.                           |
| 40. Formal and essential requisites in general.    | 51. Must be payment in money.                         |
| 41. Must be in writing.                            | 52. Must be necessary parties.                        |
| 42. As to style and material.                      | 53. The delivery.                                     |
| 43. The date.                                      | 54. As to value received.                             |
| 44. The signature.                                 | 55. As to agreements controlling the operation.       |
| 45. Must be promise or order to pay.               | 56. As to days of grace.                              |
| 46. Must be payable to order or bearer.            | 56a. As to payable at a bank.                         |
| 47. Must be certain as to promise or order to pay. | 57. As to stamps.                                     |
| 48. Must be certain as to amount.                  | 58. As to blanks.                                     |
|  | 59. As to instruments bearing a seal.                 |
|  | 60. The several parts of a foreign bill called a set. |

**§38. Definition of promissory note.** A satisfactory definition of a promissory note is found in the Negotiable Instruments Law, which states:

*"A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him."*<sup>1</sup>

The above section has changed the old existing law in a number of jurisdictions.

**§39. Definition of bill of exchange.** The following is a good definition of a bill of exchange found in the Negotiable Instruments Law:

*"A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on de-*

<sup>1</sup> Neg. Inst. Law, § 184, where all upon or citing the Law are grouped. cases directly or indirectly bearing

*mand, or at a fixed or determinable future time, a sum certain in money to order or to bearer."*<sup>2</sup>

Bills of exchange are either foreign or inland—foreign, when drawn in one state or country, and made payable in another state or country;<sup>3</sup> inland, when drawn, and made payable in the same state or country.<sup>4</sup> For the purpose of the law of negotiable instruments, the several states of the United States are foreign to each other.<sup>5</sup> Thus, a bill drawn in Pittsburg, Pennsylvania, and payable in Columbus, Ohio, is a foreign bill, while one drawn in Cincinnati, Ohio, and payable in Cleveland, in the same state, is an inland bill of exchange.

The Negotiable Instruments Law provides:

*"An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill."*<sup>6</sup>

A bill drawn in one state and addressed to the drawee in another state, had for a long time prior to the Negotiable Instruments Law been held to be a foreign bill.<sup>6a</sup>

§ 40. Formal and essential requisites in general. The Negotiable Instruments Law has the following provisions:<sup>7</sup>

*"An instrument to be negotiable must conform to the following requirements: (1) It must be in writing<sup>8</sup> and signed<sup>9</sup> by the maker or drawer. (2) Must contain an unconditional promise or order<sup>10</sup> to pay a sum certain<sup>11</sup> in money<sup>12</sup> (3) Must be*

<sup>2</sup> Neg. Inst. Law, § 126, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>3</sup> *Armstrong v. Am. Exchange Bank*, 133 U. S. 433; *Phoenix Bank v. Hussey*, 12 Pick. 483; *Holliday v. McDougall*, 20 Wend. 81; *Commercial Bank of Ky. v. Varnum*, 49 N. Y. 269; *Mason v. Dousay*, 35 Ill. 424; *Ticonic Bank v. Stacpole*, 41 Me. 302.

<sup>4</sup> *Lenning v. Ralston*, 23 Pa. St. 137; *Strawbridge v. Robinson*, 5 Gilman (Ill.) 472; *Riggin v. Collier*, 6 Mo. 568; *Yale v. Ward's Ex'r*, 30 Tex. 17.

<sup>5</sup> *Bank of U. S. v. Daniel*, 12 Peters, 32; *Commercial Bank v. Varnum*, 49 N. Y. 269.

<sup>6</sup> Neg. Inst. Law, § 129, where all cases directly or indirectly bearing

upon or citing the Law are grouped.

<sup>6a</sup> *Phoenix Bank v. Hussey*, 12 Pick. 483.

<sup>7</sup> Neg. Inst. Law, § 1, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>8</sup> *Brown v. Butchers' Bank*, 6 Hill 443; *Reed v. Roark*, 14 Tex. 325.

<sup>9</sup> *McCall v. Taylor*, 34 L. J. R. C. P. 365; *Cadillac State Bank v. Cadillac State and Heading Co.*, 129 Mich. 15.

<sup>10</sup> *White v. Cushing*, 88 Me. 339; *Iron City Bank v. McCord*, 139 Penn. St. 52.

<sup>11</sup> *Smith v. Clopton*, 4 Tex. 109; *Parsons v. Jackson*, 99 U. S. 440.

<sup>12</sup> *Auerbach v. Prichett*, 58 Ala. 451; *Quincy v. Merritt*, 11 Hump. (30 Tenn.) 439; *First Nat. Bank v. Slette*, 67 Minn. 425.

*payable on demand*<sup>13</sup> or at a fixed or determinable future time.<sup>14</sup> (4) *Must be payable to order or to bearer,*<sup>15</sup> (5) *Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.*<sup>16</sup>

This section has some minor changes in it in a few of the states.

There is also another provision in the Law providing that:<sup>17</sup>

*"The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof."*

§ 41. **Must be in writing.** As pointed out above, the instrument must be in writing. When writing is spoken of, it is not meant merely that which has been written with a pen or pencil. It includes also that which is in print or has been printed. The word instrument implies that which has been reduced to writing. Therefore, the words negotiable instruments themselves indicate that which has been reduced to writing. In order to be negotiable there must be a writing of some kind, else there would be an absence of the thing to be negotiated or passed from hand to hand. The reason a promissory note or bill of exchange must be in writing is clear, that is, the instrument is currency, and "could not run on crutches."

So the whole of the bill or note must be expressed in writing. If it is complete on its face, the general rule is that no evidence of a verbal agreement made at the time, qualifying its terms, can be admitted. Contemporaneous written agreements are admissible for the purpose of controlling the effects of the instrument as between immediate parties and those having notice. Parol evidence is generally admissible as between the parties, to show their real relations to each other, and if there be a latent ambiguity to explain it. And, in general, parol evidence is admissible between the original parties to show fraud, accident, or mistake in the creation of the instrument, or the failure (entire or partial) of consideration.<sup>18</sup>

<sup>13</sup> *Aldous v. Cornwell*, L. R. 3 Q. B. 573; *Collins v. Trotter*, 81 Mo. 278; *Hall v. Toby*, 110 Pa. St. 318; *Messmore v. Morrison*, 172 Pa. St. 300; *Porter v. Porter*, 51 Me. 376; *Jones v. Brown*, 11 Ohio St. 601.

<sup>14</sup> *Mattison v. Marks*, 31 Mich. 421; *Walker v. Woolen*, 54 Ind. 164.

<sup>15</sup> *Sherman Bank v. Apperson*, 4 Fed. 25; *Musselman v. McElhenny*,

23 Ind. 4, 85 Am. Dec. 445; *Smur v. Forman*, 1 Ohio 272; *Maule v. Crawford*, 14 Hun. 193.

<sup>16</sup> *Peto v. Reynolds*, 9 Exch. 410; *Watrous v. Halbrook*, 39 Tex. 572.

<sup>17</sup> *Neg. Inst. Law*, § 10, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>18</sup> See Chapters XXV and XXVI on Evidence.

It has been decided many times that if any discrepancy or ambiguity exists between the figures and the words indicating the amount called for by the instrument, the words<sup>19</sup> are to control. The figures constitute no part of the note or bill, but are inserted merely for convenience of reference.

**§ 42. As to style and material.** The law does not require any particular form or style as to a promissory note or bill of exchange, yet it does not seem that it would be wise to depart from the approved forms in vogue among merchants. The law looks to the substance of the transaction rather than the form, and if the intention of the parties as to assuming the obligation of drawers and makers of negotiable instruments can be determined, the law will give them force and effect regardless of the form. There is no arbitrary rule governing the material upon which the instrument should be written. It may be written upon parchment, cloth, leather or any other substitute for paper. It may be written either with a pencil or with ink.<sup>20</sup> The permanence and security of ink as compared to a writing in pencil makes the ink preferable.

**§ 43. The date.** A date in a bill or note is not necessary.<sup>21</sup> The Negotiable Instruments Law provides that "*the validity and negotiable character of an instrument are not affected by the fact that it is not dated.*"<sup>22</sup>

It is of no consequence on what portion of the paper a date is written, but it is usually written in the upper right-hand corner of the instrument. If dated, it will be presumed to have been executed on the day it bears date.<sup>23</sup> That is, "*where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement, as the case may be.*"<sup>24</sup>

If there be no date, it will be considered as dated at the time it was issued,<sup>25</sup> and parol evidence is admissible to show from

<sup>19</sup> *Saunderson v. Piper*, 5 Bing. N. C. 425; *Mears v. Graham*, 8 Blackf. (Ind.) 144.

<sup>20</sup> *Geary v. Physic*, 5 Barn. & Cress. (Eng.) 234; *Reed v. Roark*, 14 Tex. 325, 65 Am. Dec. 127.

<sup>21</sup> *Husbrook v. Wilder*, 1 Pin (Wis.) 643; *Mich. Ins. Co. v. Leavenworth*, 30 Vt. 11.

<sup>22</sup> *Neg. Inst. Law*, § 6, subd. 1, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>23</sup> *Anderson v. Weston*, 8 Scott, 583; *Maybury v. Berkery*, 102 Mich. 126; *Hill v. Dunham*, 7 Gray 543; *Wagner v. Kenner*, 2 Rob. (La.) 120.

<sup>24</sup> *Neg. Inst. Law*, § 11, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>25</sup> *Pasmore v. North*, 13 East 517; *Brewster v. McCardel*, 8 Wend. 478; *Bayley v. Taber*, 5 Mass. 286.

what time an undated instrument was intended to operate, or (if a date appears) to show that there was a mistake in the date. So an instrument may be ante-dated or post-dated.

*"The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery."*<sup>26</sup>

The above section of the Law contemplates instruments ante-dated or post-dated by the parties in accordance with a mutual agreement to that effect.<sup>26a</sup>

Where a blank has been left on the instrument for the date, it may in some cases be filled in by the holders. Thus, *"where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date."*<sup>27</sup>

The insertion of a wrong date in an undated instrument, by one having knowledge of the true date of issue, will avoid the instrument as to him, but an innocent third party may enforce the same notwithstanding the improper date.<sup>27a</sup>

**§ 44. The signature.** It is immaterial in what part of the instrument the name appears, whether at the top, in the middle, or at the bottom. Anything from which it will appear that a person intended to make the instrument his own is sufficient.<sup>28</sup> As long as the signature or emblem of the drawer or maker appears anywhere upon the instrument, it is deemed *prima facie* evidence of his intention to be bound by its obligation.<sup>29</sup>

It is immaterial whether the writing is in pencil or ink, although as a matter of permanence and security, ink is, of course, preferable.<sup>30</sup> And the name may be printed or typewritten as

<sup>26</sup> Neg. Inst. Law, § 12, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>26a</sup> Bank of Houston v. Day, 145 Mo. App. 410, 122 S. W. 756.

<sup>27</sup> Neg. Inst. Law, § 13, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>27a</sup> Bank of Houston v. Day, *supra*.

<sup>28</sup> Lampkin v. State, 105 Ala. 1, 16 So. 575; Irvin v. Sterne, 26 Ga. 223, 71 Am. Dec. 204; Dow Law Bank v. Godfrey, 126 Mich. 521, 85 N. W. 1075, 86 Am. St. Rep. 559.

<sup>29</sup> Neg. Inst. Law, § 17, and cases there cited.

<sup>30</sup> Reed v. Roark, 14 Tex. 329; Geary v. Physic, 5 Barn & C. 234.

well as written, though, in such cases, it cannot prove itself, and must be shown to have been adopted and used by the party as his signature.<sup>31</sup> The name may be written in script or Roman letters, and made with a pen or pencil, rubber stamp or type, or it may be printed, engraved, photographed or lithographed, in fact, in any form so long as the signer has adopted and issued the signature as his own.<sup>31a</sup> If another sign the name of the party in his presence and at his request, it is the same as if he did it himself;<sup>32</sup> and if another sign the party's name by verbal or other authority, it is sufficient. The full name may be written; and at least the surname should appear, and generally does. But this is not indispensable—the initials are sufficient, and any mark which the party uses to indicate his intention to bind himself will be as effectual as his signature, whether there be a certificate of witnesses on the instrument or not.<sup>33</sup> And *"the signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency."*<sup>34</sup>

The Kentucky Act requires such agent to be authorized in writing.

The above section permits proof of the ostensible authority of the agent to act; but what shall constitute sufficient proof of such authority is left to the common law.<sup>34a</sup>

*"A signature by 'procuration' operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority."*<sup>35</sup>

The words "per procuration" have a special technical significance and are seldom if ever used in this country. They are an express intimation of a special and limited authority; and a person taking a bill so drawn, accepted or indorsed, is bound to inquire into the extent of the authority.<sup>35a</sup>

<sup>31</sup> Pennington v. Baehr, 48 Cal. 565; Lexington v. Union Nat. Bank, 75 Miss. 1, 22 So. 291; Weston v. Myers, 33 Ill. 424.

<sup>31a</sup> Weston v. Myers, 33 Ill. 424. Note 7 A. L. R. 672.

<sup>32</sup> Crumrine v. Crumrine, 14 Ind. App. 641; 43 N. E. 322; Kennedy v. Graham, 9 Ind. App. 624, 35 N. E. 925.

<sup>33</sup> Signing by mark. Merchants Bank v. Spicer, 6 Wend. (N. Y.)

443. See note 14 L. R. A. 693, and 22 L. R. A. 372.

<sup>34</sup> Neg. Inst. Law, § 19, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>34a</sup> Grant County State Bank v. N. W. Land Co., 28 N. D. 479, 150 N. W. 736.

<sup>35</sup> Neg. Inst. Law, § 21, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>35a</sup> Bryant, Parvis & Bryant v.

*"Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof, against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority."*<sup>35</sup>

The Negotiable Instrument Law also provides:

*"No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name."*<sup>36</sup>

One may become a party to a negotiable instrument by any designation he desires, provided it be used as a substitute for his name and he intends to be bound by it.<sup>36a</sup>

**§ 45. Must be promise or order to pay.** In order that the instrument contain a promise it is not necessary to use the word promise. But while it is not necessary to use that particular word, it has been held that the instrument must contain an express promise.<sup>37</sup> The instrument contains an express promise whenever it contains an expression equivalent to the word promise. It has been held that where a certain time for payment has been expressed in the instrument, or the words "on demand" are used, the instrument contains a promise. Example, "Due A. B. \$76.50 on demand,"<sup>38</sup> or "Pay to A. B. \$76.50 on Dec. 24, 1922."<sup>39</sup> The words "Value received,"<sup>40</sup> or "to be accountable,"<sup>41</sup> do not import, nor are they equivalent to a promise to pay. In a bill of exchange it is no more necessary that the word order should be used than it is that the word promise should be used in a promissory note.<sup>42</sup> Any words which are equivalent to an order

Quebec Bank (1893) (England), A. C. 170, 179.

<sup>35</sup> Neg. Inst. Law, § 23, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>36a</sup> Neg. Inst. Law, § 18, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>36b</sup> Brown v. Butcher's and Drovers' Bank, 6 Hill (N. Y.) 443.

<sup>37</sup> Smith v. Bridges, 1 Ill. 18; Hegeman v. Moon, 131 N. Y. 462, 30 N. E. 487; Taylor v. Steele, 16 M. & W. 665.

<sup>38</sup> Smith v. Allen, 5 Day (Conn.) 337; Kimball v. Huntington, 10 Wend. (N. Y.) 675; Currier v.

Lockwood, 40 Conn. 349, 16 Am. Rep. 40.

<sup>39</sup> Cowan v. Hollack, 9 Colo. 572, 13 Pac. 700; Kendall v. Lewis, 10 Ky. L. Rep. 362.

<sup>40</sup> St. Vrain Stone Co. v. Denver, N. & P. R. Co., 18 Colo. 211, 32 Pac. 827.

<sup>41</sup> Hyne v. Dewdney, 21 L. J. Q. B. 278. But see Hegeman v. Moon, 131 N. Y. 462.

<sup>42</sup> Ellison v. Collingridge, 67 E. C. L. 570; Ruff v. Webb, 1 Esp. 129, 5 Rev. Rep. 723; Bresenthall v. Williams, 1 Dew (Ky.), 329, 85 Am. Dec. 629.



or which show the drawer's will that the money should be paid are sufficient to make the instrument a bill of exchange. A bill of exchange is something more than the mere asking of a favor. It is in its very nature an instrument demanding a right. Hence a mere request or supplication made or authority given to pay a certain amount of money has been held not to be a bill.<sup>43</sup> The following would be a good bill: "Mr. Smith will much oblige Mr. Jones by *paying* John Brown, or order, on account \$50.00." The words by *paying* are held sufficient to import an order to pay.<sup>44</sup>

§ 46. **Must be payable to order or bearer.** By the Negotiable Instruments Law "*bearer means the person in possession of a bill or note which is payable to bearer.*"<sup>45</sup>

However, it is not essential that the words to order or to bearer be used so as to make the instrument negotiable, although they are the simplest words and the ones most frequently used.<sup>46</sup> The words to *A* or holder and to *A* and his assigns are equivalent words which will render the instrument negotiable.<sup>47</sup> These words of negotiability may be dispensed with and the expression, "This is and shall be negotiable," may be inserted in the instrument, which expression makes the paper fully negotiable.<sup>48</sup> The instrument may also be made negotiable by using the words "to the order of *A*."<sup>49</sup> But if the instrument reads "to the bearer, *A*," it is not negotiable, because the expression, "to the bearer," is only descriptive of *A*, and there are no words of negotiability.<sup>50</sup>

The Negotiable Instruments Law sets down certain rules as to when an instrument is held payable to order and also when held payable to bearer:

*"The instrument is payable to order where it is drawn payable to the order of a specified person or to him or to his order. It*

<sup>43</sup> Woolley v. Sargent, 8 N. J. L. 262, 14 Am. Dec. 419; Little v. Slackford, M. & M. 171, 31 Rev. Rep. 726, 22 E. C. L. 498; Russell v. Powell, 14 M. & M. 418, 14 L. J. Exch. 269.

<sup>44</sup> Ruff v. Webb, 1 Esp. 129, 5 Rev. Rep. 723.

<sup>45</sup> Neg. Inst. Law, § 191, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>46</sup> Wilson County v. Third Nat. Bank, 103 U. S. 770; United States v. White, 2 Hill (N. Y.) 59, 37 Am. Dec. 374.

<sup>47</sup> Putnam v. Crymes, 1 McMull 9, 36 Am. Dec. 250; Wilson County v. Third Nat. Bank, 103 U. S. 770; Dutchess Co. Ins. Co. v. Hachfield, 1 Hun 676.

<sup>48</sup> Raymond v. Middleton, 29 Pa. St. 529; Cudahy Packing Co. v. Sioux Nat. Bank, 75 Fed. 473, 21 C. C. A. 428.

<sup>49</sup> Wittey v. Mich. Mut. etc. Co., 123 Ind. 411, 24 N. E. 141; Howard v. Palmer, 64 Me. 86; Stevens v. Gregg, 86 Ky. 461, 12 S. W. 775.

<sup>50</sup> Weaver v. Scott, 32 Ia. 22.

may be drawn payable to the order of: (1) *A payee who is not maker, drawer or drawee; or (2) the drawer or maker; or (3) the drawee; or (4) two or more payees jointly; or (5) one or some of several payees; or (6) the holder of an office for the time being.*

*"Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty."*<sup>51</sup>

The last clause of the above section of the Law changes the old rule of law. Thus, when a note was drawn payable to order, but with an unfilled blank for the name of the payee and negotiated in that condition, any bearer who came by it regularly can no longer fill the blank and recover thereon.<sup>51a</sup> The Illinois Act adds after subsection 6 the following: "7. An instrument payable to the estate of a deceased person shall be deemed payable to the order of the administrator or executor of his estate."

As to when an instrument is held payable to bearer, the Negotiable Instruments Law provides:

*"The instrument is payable to bearer: (1) When it is expressed to be so payable; or (2) when it is payable to a person named therein or bearer; or (3) when it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or (4) when the name of the payee does not purport to be the name of any person; or (5) when the only or last indorsement is an indorsement in blank."*<sup>52</sup>

The Illinois Act makes some changes in the above section.

**§ 47. Must be certain as to promise or order to pay.** If the instrument is a bill, it must contain a certain direction to pay<sup>53</sup>—if it is a note, a certain promise to pay.<sup>54</sup> As stated heretofore, a bill is, in its nature, the demanding of a right, not the mere asking of a favor, and therefore a supplication made or authority given to pay an amount is not a bill. The language: "Please to send \$10.00 by bearer, as I am so ill I cannot wait upon you," is held not to be a bill.<sup>55</sup>

A promissory note must contain a certain promise to pay. If over and above the mere acknowledgment of debt, there may

<sup>51</sup> Neg. Inst. Law, § 8, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>51a</sup> Tower v. Stanley, 220 Mass. 429, 107 N. E. 1010.

<sup>53</sup> Neg. Inst. Law, § 9, where all cases directly or indirectly bearing upon or citing the Law are grouped. Union National Bank of Columbia

v. Cook (District of Columbia), 96 S. E. 484.

<sup>53</sup> Gillian v. Myers, 31 Ill. 525; Knowlton v. Cooley, 102 Mass. 233.

<sup>54</sup> Smith v. Bridges, 1 Ill. 18; Forward v. Thompson, 12 U. C. I. B. 103; Taylor v. Steele, 16 M. & W. 665.

<sup>55</sup> King v. Ellor, 1 Teach. 323.

be collected from the words used a promise to pay it, the instrument may be regarded as a promissory note.<sup>56</sup>

The Negotiable Instruments Law provides:

*"An instrument is payable on demand: (1) Where it is expressed to be payable on demand, or at sight, or on presentation; or (2) in which no time for payment is expressed. Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand."*<sup>57</sup>

**§ 48. Must be certain as to amount.** It is also a requisite to the negotiability of an instrument that it shall call for the payment of a definite and certain sum,<sup>58</sup> and not for unliquidated damages. The amount to be paid or the amount which the paper represents should be stated plainly on the face of the instrument, and like the denomination of money must be stated, in the body of the instrument or it will be defective, unless it has been left blank and express or implied authority given to fill it up. The amount is customarily written in the margin also, but this is held to be no part of the instrument, and made simply for convenience of reference, and the statement in the body of the instrument controls, and should they vary any holder may change the marginal figures to conform to the amount as written in the body of the paper.<sup>59</sup> Unless required by statute to be written in words, the amount may be stated in the body of the instrument in figures. Abbreviations and characters which have well defined meanings may be employed.

There is some conflict of authority as to whether if there be added to the amount, "with exchange,"<sup>60</sup> or "with current ex-

<sup>56</sup> Smith v. Bridges, 1 Ill. 18; Forward v. Thompson, 12 U. C. I. B. 103; Taylor v. Steele, 16 M. & W. 665.

<sup>57</sup> Neg. Inst. Law, § 7, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>58</sup> Gaar v. Louisville Banking Co., 11 Bush. (Ky.) 180, 21 Am. Rep. 209; Kendall v. Galvin, 15 Me. 131, 32 Am. Dec. 141; Port Huron First Nat. Bank v. Carson, 60 Mich. 432, 27 N. W. 589. As to effect of marginal letters or figures in bill or note otherwise blank as to amount, see note 2 L. R. A. (N. S.) 879.

<sup>59</sup> Neg. Inst. Law, § 17, sub. 1, and cases there cited; Smith v.

Smith, 1 R. I. 398, 53 Am. Dec. 652; Rockville Nat. Bank v. Second Nat. Bank, 69 Ind. 479, 35 Am. Rep. 236.

As to when marginal figures may be referred to see: Sweetzer v. French, 13 Metc. (Mass.) 262; Petty v. Fleischel, 31 Tex. 169, 98 Am. Dec. 524.

<sup>60</sup> Clark v. Skeen, 61 Kan. 526, 60 Pac. 327, 78 Am. St. Rep. 337, 49 L. R. A. 190; Hastings v. Thompson, 54 Minn. 184, 55 N. W. 968, 40 Am. St. Rep. 315, 21 L. R. A. 178. *Contra*, Culbertson v. Nelson, 93 Ia. 187, 61 N. W. 854, 57 Am. St. Rep. 266, 27 L. R. A. 222.

change on another place,"<sup>61</sup> the commercial character of the paper is or is not impaired. The weight of authority is that it is not, as that is capable of definite ascertainment and so the amount to be added is certain, and as set out below the Negotiable Instruments Law makes such paper negotiable.

A stipulation as to interest does not make the amount uncertain.<sup>62</sup> It might be stated here, by way of parenthesis, that it is a general rule of commercial law that where a note is made payable with interest, without specifying the rate, or the time from which the interest is to be computed, the note carries interest from the date of its complete execution or its issue, at a legal rate fixed by law.<sup>63</sup>

The provisions in notes, payable in part payment or installments, to the effect that if any one of the installments is not paid as agreed, all installments or the whole sum shall become due and payable, does not destroy the negotiability of the note, and such notes are quite common.<sup>64</sup> The provision that the interest shall be paid at stated intervals, and if not paid the entire sum shall become due, is also common, and does not affect the negotiability of the paper. There is likewise a conflict as to whether by adding the words, "with reasonable attorney's fees," the negotiability of an instrument is destroyed. The better opinion is that they do not.<sup>65</sup> Instruments with such words are not like contracts—to pay money and do some other things. They are simply for the payment of a certain sum of money at a certain time, and the additional stipulations as to attorney's fees can never go into effect if the terms of the bill or note are complied with. They are, therefore, incidental and ancillary to the main engagement, intended to assure its performance or to compensate for trouble and expense entailed by its breach.

<sup>61</sup> *Smith v. Kendall*, 9 Mich. 241, 80 Am. Dec. 83.

<sup>62</sup> Neg. Inst. Law, § 2, where all cases directly or indirectly bearing upon or citing the Law are grouped.

*Kirkwood v. Hastings First Nat. Bank*, 40 Neb. 484, 58 N. W. 1016, 42 Am. St. Rep. 683, 24 L. R. A. 444. See note 2 A. L. R. 139.

<sup>63</sup> *Salazar v. Taylor*, 18 Colo. 538, 33 Pac. 369; *Belford v. Beatty*, 145 Ill. 414, 34 N. E. 254.

<sup>64</sup> *Roberts v. Snow*, 27 Neb. 425, 43 N. W. 241; *Wilson v. Campbell*, 110 Mich. 580, 68 N. W. 278; *Hol-*

*ingshead v. Stuart*, 8 N. D. 35, 77 N. W. 89, 42 L. R. A. 659.

<sup>65</sup> *Bowie v. Hall*, 69 Md. 433, 16 Atl. 64, 9 Am. St. Rep. 433, 1 L. R. A. 546; *Bank of Commerce v. Fuqua*, 11 Mont. 285, 28 Pac. 291, 28 Am. St. Rep. 461, 14 L. R. A. 588. As to validity of agreement to pay attorney's fees, see 55 Am. St. Rep. 438-441, 444; see also notes 7 L. R. A. 445, 1 L. R. A. 547, 3 L. R. A. 51.

*Contra*, *National Bank of Commerce v. Feeney*, 9 S. D. 550, 70 N. W. 874, 46 L. R. A. 732.

The Negotiable Instruments Law fully covers all such stipulations by providing that *"the sum payable is a sum certain within the meaning of this act, although it is to be paid:*

- (1) *With interest; or*
- "(2) *By stated installments; or*
- "(3) *By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or*
- "(4) *With exchange, whether at a fixed rate or at the current rate; or*
- "(5) *With costs of collection or an attorney's fee, in case payment shall not be made at maturity."*<sup>66</sup>

Some changes have been made in some jurisdictions in some of the parts of the above section.

§ 49. **Must be certain as to time of payment.** The instrument must be payable without conditions and at all events in order to be negotiable.<sup>67</sup>

If the order or promise be payable provided terms mentioned are complied with; as, for instance, that a certain receipt be produced by a certain time,<sup>68</sup> it is not a negotiable bill or note; and likewise if payable provided a certain ship shall arrive,<sup>69</sup> or provided the maker shall live a certain time,<sup>70</sup> or upon any contingency. *"An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect."*<sup>71</sup>

If the time must certainly come, although the particular day is not mentioned, the instrument is regarded as negotiable, as the fact of payment is certain. If the instrument is payable at, or within a certain time after, a man's death, it is sufficient, because the event must occur.<sup>72</sup> *"An instrument is payable at a*

<sup>66</sup> Neg. Inst. Law, § 2, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>67</sup> Harrell v. Marston, 7 Rob. (La.) 34; New Windsor First Nat. Bank v. Bynum, 84 N. C. 24, 37 Am. Rep. 604; Mahoney v. Fitzpatrick, 133 Mass. 151, 43 Am. Rep. 502.

<sup>68</sup> Mason v. Metcalf, 4 Baxt. (Tenn.) 440.

But see, Kirkwood v. First Nat. Bank, 40 Neb. 484, 58 N. W. 1016, 42 Am. St. Rep. 683, 24 L. R. A. 444.

<sup>69</sup> Grant v. Wood, 12 Gray

(Mass.) 220; The Lykus, 36 Fed. 919.

<sup>70</sup> Kelley v. Hemmingway, 13 Ill. 604; Rice v. Rice, 43 N. Y. App. Div. 458, 60 N. Y. S. 97.

<sup>71</sup> Neg. Inst. Law, § 4, last part, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>72</sup> Garrigus v. Home Frontier etc. Missionary Society, 3 Ind. App. 91, 28 N. E. 1009, 50 Am. St. Rep. 262; Hegeman v. Moon, 131 N. Y. 462, 30 N. E. 487; Carnwright v. Gray, 127 N. Y. 92, 27 N. E. 835, 24 Am. St. Rep. 424, 12 L. R. A. 845.

See note 2 A, L. R. 1471,

*determinable future time within the meaning of this act, which is expressed to be payable:*

"(1) *At a fixed period after date or sight; or*

"(2) *On or before a fixed or determinable future time specified therein; or*

"(3) *On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening be uncertain.*"<sup>73</sup>

In a few decisions a note or bill made payable "on or before" a stated date has been held non-negotiable, but the great majority of decisions declare such an instrument to be negotiable, since the legal rights of the holder are clear and certain, and the instrument being due at a time fixed and not before, the maker has a mere option to pay in advance of the legal liability if he sees fit.<sup>74</sup>

If a bill or note is made payable expressly or impliedly out of a particular fund it is not negotiable according to the law merchant, because there may be no such fund.<sup>75</sup> *"An unqualified order or promise to pay is unconditional, though coupled with an indication of a particular fund out of which reimbursement is to be made, or a particular account is to be debited with the amount. But an order or promise to pay out of a particular fund is not unconditional."*<sup>76</sup>

An order on a saving bank, "Pay C, or order, three hundred dollars, or what may be due on my deposit book No. 1, page 632," is payable out of a particular fund, and therefore not negotiable under the statute.<sup>76a</sup>

**§ 50. As to place of payment.** The purpose of a certain place of payment being set out in the instrument is to fix the place at which the holder must present the bill of exchange or note for payment. This is a very important feature of the instrument when we come to consider the liability of sureties and indorsers. If no place is mentioned, presentment must be made

<sup>73</sup> Neg. Inst. Law, § 4, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>74</sup> Walker v. Woolen, 54 Ind. 164; Charlton v. Reed, 61 Iowa 166, 16 N. W. 64, 47 Am. Rep. 808; Ernst v. Steckman, 74 Pa. St. 13, 15 Am. Rep. 542. See also note 11 L. R. A. 748.

<sup>75</sup> Turner v. Peoria etc. Ry. Co., 95 Ill. 134, 35 Am. Rep. 144; Miller v. Poage, 56 Ia. 96, 8 N. W. 799,

41 Am. Rep. 82; Thompson v. Wheatland Mercantile Co., 10 Wyo. 86, 66 Pac. 595. As to reference to account or fund as affecting negotiability, see note 8 L. R. A. (N. S.) 231; see also notes 35 L. R. A. 647 and 22 U. S. L. Ed. 161.

<sup>76</sup> Neg. Inst. Law, § 3, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>76a</sup> National Savings Bank v. Cable, 73 Conn. 568,

at the place of business of the primary obligor.<sup>77</sup> If he has no place of business, presentment must then be made at his residence.<sup>78</sup> Another purpose of having a certain place of payment set out in the instrument is to determine what law shall govern as to the condition and manner of payment. As a general rule it is not necessary to the negotiability of the instrument that a place of payment be designated.<sup>79</sup> But it is now required by statute in some of the states.

The Negotiable Instruments Law provides that "*the validity and negotiable character of an instrument are not affected by the fact that it does not specify the place where it is drawn or the place where it is payable.*"<sup>80</sup>

§ 51. **Must be payable in money.** Another essential requisite of a bill of exchange or promissory note is that the medium of payment must be money; that is, the direction or promise in such instrument must be to pay in money.<sup>81</sup> If the instrument calls for the payment of goods, or is in the alternative, as for the payment of a sum of money or "to issue stock," it is not negotiable and becomes a mere simple contract.<sup>82</sup> It has been held, however, that if the instrument calls for the payment of goods or money, giving the holder the option to choose, it is in effect payable in money and so negotiable. So if the instrument be expressed to be payable "in work,"<sup>83</sup> or in any other article than money, as, for instance, "an ounce of gold,"<sup>84</sup> it becomes a special contract, and by the law merchant loses its character as commercial paper. Thus it has been held that if the instrument be to pay money, and also "to deliver up horses and a wharf,"<sup>85</sup> or "to pay money and take up a certain outstanding note," it is not a negotiable note.<sup>86</sup>

<sup>77</sup> Biglow v. Kellar, 6 La. Ann. 59, 54 Am. Dec. 555; Merrick v. Burlington etc. Plank Road Co., 11 Ia. 74; Haber v. Brown, 101 Cal. 445, 35 Pac. 1035.

<sup>78</sup> Stivers v. Prentice, 3 B. Mon. (Ky.) 461; Shamburgh v. Cemmagere, 10 Mart. (La.) 18; Packard v. Lyon, 5 Duer. (N. Y.) 82.

<sup>79</sup> Kendall v. Galvin, 15 Me. 131, 32 Am. Dec. 141; Spears v. Bond, 79 Mo. 467.

<sup>80</sup> Neg. Inst. Law, § 6, sub. div. 3, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>81</sup> Killan v. Schoeps, 26 Kan. 310, 40 Am. Rep. 313; Johnson v. Griest,

85 Ind. 503; Chandler v. Calvert, 87 Mo. App. 368. As to payment in money only, see note 3 L. R. A. 50.

<sup>82</sup> Pridgen v. Cox, 9 Tex. 367; Corbitt v. Stonemetz, 15 Wis. 170; Markley v. Rhodes, 59 Ia. 57, 12 N. W. 775.

<sup>83</sup> Bothick v. Purdy, 3 Mo. 82; McClelland v. Coffin, 93 Ind. 456; Ransom v. Jones, 2 Ill. 291.

<sup>84</sup> Roberts v. Smith, 58 Vt. 492, 4 Atl. 709, 56 Am. Rep. 567.

<sup>85</sup> Martin v. Chantry, 2 Strange 1271.

<sup>86</sup> Cook v. Saterlee, 6 Cow. 100. But see Hodges v. Shuler, 22 N. Y. 114.

But it is held that "*an unqualified order or promise to pay is unconditional though coupled with a statement of the transaction which gives rise to the instrument.*"<sup>87</sup>

The most frequent instances of such notes are notes given in payment of the purchase price of goods and chattels.<sup>87a</sup>

So also an instrument in terms and form a negotiable promissory note does not lose that character because it recites that the maker has deposited collateral security for its payment, which he agrees may be sold in a specified manner.<sup>88</sup> Thus it seems well settled that, although it may appear on the face of the note that its payment is secured by collaterals in personal property, or mortgage of real property, yet if otherwise in proper form, it is negotiable.

The Negotiable Instruments Law covers this and many similar provisions by the following section:

*"An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:*

*"(1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or*

*"(2) Authorizes a confession of judgment if the instrument be not paid at maturity; or*

*"(3) Waives the benefit of any law intended for the advantage or protection of the obligor; or*

*"(4) Gives the holder an election to require something to be done in lieu of payment of money.*

*"But nothing in this section shall validate any provision or stipulation otherwise illegal."*<sup>89</sup>

Illinois, Kentucky, Wisconsin among other states make some changes in section 5 of the Law above set out. The object of the last sentence of this section is to prevent any inference of an intent to validate any agreement or stipulation set out in the section, where by any statute or settled policy of the state, the same would be illegal.

It is uniformly held that a power of attorney to confess judg-

<sup>87</sup> Neg. Inst. Law, § 3, subd. 2, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>87a</sup> Chicago Railway Equipment Co. v. Merchants' Nat. Bank, 136 U. S. 268.

<sup>88</sup> Valley Nat. Bank v. Crowell, 148 Pa. St. 284, 23 Atl. 1068, 33

Am. St. Rep. 824; De Hass v. Dibert, 70 Fed. 227, 17 C. C. A. 79, 30 L. R. A. 189; Carroll Bank v. Taylor, 67 Ia. 572, 25 N. W. 810.

<sup>89</sup> Neg. Inst. Law, § 5, where all cases directly or indirectly bearing upon or citing the Law are grouped.



ment must be strictly construed, and whether the power can be executed for the benefit of a holder of a note other than the payee must depend upon the language of the power itself.<sup>90</sup> If the note is in itself perfect, without conditions, it may remain negotiable although the power of the attorney to confess judgment may not, by its terms, operate in favor of an indorsee or transferee of the note.<sup>91</sup>

A stipulation authorizing a confession of judgment if the instrument is not paid at maturity is recognized as valid in many jurisdictions. In others it is not recognized as valid. It is stated by the court in one jurisdiction that it is the acknowledged public policy of that state not to recognize powers of confession in promissory notes, and that it seemed to be the public policy as declared by the statute in that state in respect to confessions of judgment requiring that in order to be a valid execution of such power, there must at the time of its execution be an affidavit made.<sup>91a</sup>

*"The validity and negotiable character of an instrument are not affected by the fact that it does not specify the value given, or that any value has been given therefor. But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument."*<sup>92</sup>

Thus it is often required when notes are given for a patent or some right therein that the instrument should state the nature of the consideration. "A promissory note or other negotiable instrument, the consideration of which consists wholly or partly of the right to make, use or sell any invention claimed or represented by the vendor at the time of sale to be patented, must contain the words, 'given for a patent right,' prominently and legibly written or printed on the face of such note or instrument above the signature thereto; and such note or instrument in the hands of any purchaser or holder is subject to the same defenses as in the hands of the original holder; but this section does not apply to a negotiable instrument given solely for the purchase price or the use of a patented article."<sup>93</sup> Some states as New

<sup>90</sup> Cushman v. Welsh, 19 Ohio St. 536; Manufacturers and Mechanics Bank v. St. John, 5 Hill (N. Y.) 497; Spence v. Emerine, 46 Ohio St. 433, 21 N. E. 866, 15 Am. St. Rep. 634; Marsden v. Soper, 11 Ohio St. 503.

<sup>91</sup> Osborn v. Howley, 19 Ohio 130.

<sup>91a</sup> Irose v. Balla, 181 Ind. 491.

<sup>92</sup> Neg. Inst. Law, § 6, where all

cases directly or indirectly bearing upon or citing the Law are grouped. As to a note not indicating the nature of its consideration as required by statute see note 10 L. R. A. (N. S.) 842.

<sup>93</sup> Neg. Inst. Law, § 330 of N. Y. law, where all cases directly or indirectly bearing upon or citing the Law are grouped.

York and Ohio have made this provision as to patent notes a part of the Negotiable Instruments Law while many other states have such a law as a separate statute.

The term money properly includes all legal tender.<sup>94</sup> Though the word "currency" includes bank-notes, which are not legal tender, yet it is held that certificates of deposit, notes, bills, bonds, checks and the like, payable in "currency," or in "current funds of this state," "current Ohio bank-notes," etc., constitute good commercial paper, and are really payable in money, as the term used is but a common expression used to indicate current legal tender.<sup>95</sup>

The property of being legal tender is not necessarily inherent in money; it generally belongs no more to inferior coin than to paper money. Legal tender is that kind of money which the law compels a creditor to accept in payment of his debt, when tendered by the debtor in the right amount.<sup>96</sup> Foreign gold or silver coins are not legal tender.<sup>97</sup> The gold and silver coins of the United States and the United States notes are lawful money and legal tender in the payment of all debts, public and private.<sup>98</sup>

*"The validity and negotiable character of an instrument are not affected by the fact that it designates a particular kind of current money in which payment is to be made."*<sup>99</sup>

But if the instrument is made payable in the paper or currency of a particular bank, specifically and absolutely, and without reference to the currency or value of the paper, it is held not to be for the payment of money and is not negotiable.<sup>1</sup>

An instrument payable in "current funds" is negotiable.<sup>1a</sup>

It has been held that it is necessary that the instrument should express the specific denomination of money when it is payable in the money of a foreign country, in order that the courts may be able to ascertain its equivalent value; otherwise it is not negotiable.<sup>2</sup>

<sup>94</sup> Jones v. Overstreet, 4 T. B. Mon. (Ky.) 547; Mann v. Mann, 1 Johns Ch. (N. Y.) 236.

<sup>95</sup> Telford v. Patton, 144 Ill. 611, 33 N. E. 1119; Butler v. Paine, 8 Minn. 324; Phelps v. Town, 14 Mich. 374; ("Current Ohio Bank Notes"); Sweetland v. Creigh, 15 Ohio 118; Bull v. Bank, 123 U. S. 105. There is much conflict on the above point, however.

<sup>96</sup> Black's Law Dic.; Martin v. Bolt, 17 Ind. App. 444, 46 N. E. 151.

<sup>97</sup> United States Revised Statutes, § 3584.

<sup>98</sup> United States Revised Statutes, § 3585.

<sup>99</sup> Neg. Inst. Law, § 6, subd. 5 and cases there cited.

<sup>1</sup> Bonnell v. Covington, 7 How. (Miss.) 322; Whiteman v. Chidress, 6 Humph. (Tenn.) 303; Fry v. Rousseau, 3 McLean (U. S.) 106, 9 Fed. Cas. No. 5,141; Mitchell v. Walker, 4 Ark. 145.

<sup>1a</sup> Millikan v. Security Trust Company, — Ind. —, 118 N. E. 568.

<sup>2</sup> Thompson v. Sloan, 23 Wend. (N. Y.) 71. But see Hogue v. Williamson, 85 Tex. 553, 22 S. W. 580, 34 Am. St. Rep. 823, 20 L. R. A.

Where an instrument is made payable generally in the money of a foreign country, without specifying the kind or denomination of the coin or money, so that payment may be made in our own coin of equivalent value as determined by the par of exchange, it is not negotiable, according to a leading case in New York upon this question.<sup>3</sup> This is not the invariable rule, for in a Michigan case a note payable in "Canada currency" was held negotiable, and the New York case already referred to was disapproved.<sup>4</sup>

**§ 52. Must be necessary parties.** The name of the maker of a note or the drawee of a bill should appear on the instrument. In the case of the note it is important, as it is the maker who is liable thereon,<sup>5</sup> and in case of the bill the drawee's name must be written in order to bind the party accepting.<sup>6</sup>

The bill must be addressed to some person, except that:

(a) If the drawee can be otherwise sufficiently identified from the bill it is sufficient; and<sup>7</sup>

(b) An unaddressed bill accepted or a bill accepted, where the drawer and acceptor are one and the same person, probably is to be treated as a promissory note, and is negotiable.<sup>8</sup>

The bill or note must point out some person to whom the money is to be paid.<sup>9</sup>

The following are the common rules concerning the nomination of payees:

(a) The payee of an instrument, except one payable to bearer, must be a person in being, natural or legal, and ascertained, at the time of issue.<sup>10</sup>

481; *Black v. Ward*, 27 Mich. 193, 15 Am. Rep. 162.

<sup>3</sup> *Thompson v. Sloan*, 33 Wend. (N. Y.) 71.

<sup>4</sup> *Black v. Ward*, 27 Mich. 193, 15 Am. Rep. 162.

<sup>5</sup> *Union Nat. Bank v. Forstall*, 41 La. Ann. 113, 6 So. 32; *Keck v. Sedalia Brewing Co.*, 22 Mo. App. 187; *Ferris v. Bond*, 4 B. & Ald. 679, 23 Rev. Rep. 443, 6 E. C. L. 651.

<sup>6</sup> *Funk v. Babbitt*, 156 Ill. 408, 41 N. E. 166; *Watrous v. Holbrook*, 39 Tex. 572; *McPherson v. Johnston*, 3 Brit. Col. 465.

<sup>7</sup> *Ala. Coal Min. Co. v. Brainard*,

35 Ala. 476; *Culver v. Marks*, 122 Ind. 554, 23 N. E. 1086, 17 Am. St. Rep. 377, 7 L. R. A. 489; *Rice v. Ragland*, 10 Humph. (Tenn.) 545, 53 Am. Dec. 737.

<sup>8</sup> *Bliss v. Burnes*, *McCahon* (Kan.) 97; *Funk v. Babbitt*, 156 Ill. 408, 41 N. E. 166.

<sup>9</sup> *Brown v. Gilman*, 13 Mass. 158; *Secy. v. State Bank*, 3 Sneed (Tenn.) 558, 67 Am. Dec. 579.

<sup>10</sup> *Wayman v. Torreyson*, 4 Nev. 124; *U. S. v. Coffeyville First Nat. Bank*, 82 Fed. 410; *New v. Walker*, 108 Ind. 365, 9 N. E. 386, 58 Am. Rep. 40; *7ddy v. Bond*, 19 Me. 461, 36 Am. Dec. 767.

(b) Where the payee and maker or drawer are the same person, the instrument is not issued until after its indorsement and delivery.<sup>11</sup>

(c) The payee may be a fictitious or non-existing person, but the instrument is then construed as payable to bearer, and title thereto is made by estoppel.<sup>12</sup>

*"A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession."*<sup>13</sup>

*"Where in a bill the drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note."*<sup>14</sup>

*"The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit."*<sup>15</sup>

A bill or note may be executed by one person or by a number of persons. When executed by but one, it is called a several note. When executed by two or more, it is either joint, or joint and several, according to its wording. Thus, if in a note signed by two or more, the plural number is used in referring to them as "we promise to pay," it is held to be a joint note.<sup>16</sup> While if in the same note the singular number is used, as "I promise to pay," then the note is considered as joint and several, since this expression indicates an intention to make it a joint and several note.<sup>17</sup> So the expression, "we or either of us," is held to make a note joint and several.<sup>18</sup>

<sup>11</sup> Norfolk Nat. Bank v. Griffin, 107 N. C. 173, 11 S. E. 1049, 22 Am. St. Rep. 868; Ewan v. Brooks-Waterfield Co., 55 Ohio St. 596, 45 N. E. 1014, 60 Am. St. Rep. 719, 35 L. R. A. 786.

<sup>12</sup> Kohn v. Watkins, 26 Kan. 691, 40 Am. Rep. 336; Shaw v. Brown, 128 Mich. 573, 87 N. W. 757; Phillips v. Mercantile Nat. Bank, 140 N. Y. 556, 35 N. E. 982, 37 Am. St. Rep. 596, 23 L. R. A. 584.

<sup>13</sup> Neg. Inst. Law, § 128, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>14</sup> Neg. Inst. Law, § 130, where all cases directly or indirectly bear-

ing upon or citing the Law are grouped.

<sup>15</sup> Neg. Inst. Law, § 131, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>16</sup> Harrow v. Dugan, 6 Dana (Ky.) 341; Lafourche Transp. Co. v. Pugh, 52 La. Ann. 1517, 27 So. 958; Peaks v. Dexter, 82 Me. 85, 19 Atl. 100.

<sup>17</sup> Dow Law Bank v. Godfrey, 126 Mich. 521, 85 N. W. 1075, 86 Am. St. Rep. 559; Warren First Nat. Bank v. Fowler, 36 Ohio St. 524, 38 Am. Rep. 610.

<sup>18</sup> Pogue v. Clark, 25 Ill. 333; Harvey v. Irvine, 11 Ia. 82; Harris

The Negotiable Instruments Law provides: “\* \* \* *Where an instrument containing the words ‘I promise to pay’ is signed by two or more persons, they are deemed to be jointly and severally liable thereon.*”<sup>18a</sup>

§ 53. The delivery. By the Negotiable Instruments Law “*delivery means transfer of possession, actual or constructive, from one person to another.*”<sup>19</sup>

An undelivered bill or note is inoperative, because delivery is essential to the final completion of every written contract. Until delivery, the contract, is revocable. Delivery means transfer of possession with intent to transfer title, and is of two kinds: (1) The manual passing of the instrument itself; and (2) some act manifesting intent to transfer right of possession while the possession of the instrument is actually with another.

It has been held that by depositing a note in the mail with the intent that it shall be transmitted to the payee in the usual way the said party will be in control over it and the delivery is in legal contemplation completed.<sup>19a</sup>

“*Where an incomplete instrument has not been delivered it will not if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.*”<sup>20</sup>

A negotiable instrument must be complete and perfect when it is issued, or there must be authority reposed in some one afterward to supply anything needed to make it perfect.<sup>20a</sup>

This section of the law rather concerns delivery as between immediate parties. Thus we might say that delivery of a negotiable instrument is essential in order to create any liability as between the immediate parties to the instrument. This section then does not refer to the delivery to a bona fide purchaser for value without notice. This section and the one following in the Law and also following in this text should be considered together. In order to avoid confusion as to matters relating to delivery considered in a later chapter these two sections will be briefly discussed. The other section provides as follows:

v. Coleman etc. White Lead Co., 58 Ill. App. 366.

<sup>18a</sup> Neg. Inst. Law, § 17, subdiv. 7, where cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>19</sup> Neg. Inst. Law, § 191, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to delivery, see note

37 Am. St. Rep. 458, 459; see also note 6 L. R. A. 470.

<sup>19a</sup> Canterbury v. Sparta Bank, 91 Wis. 53, 64 N. W. 311, 30 L. R. A. 845.

<sup>20</sup> Neg. Inst. Law, § 15, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>20a</sup> Davis Sewing Machine Co. v. Best, 105 N. Y. 59.

*"Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved."*<sup>21</sup>

Some jurisdictions have made some changes in this section of the Law. In North Carolina the words "accepting or" between the words "drawing" and "indorsing" in the second sentence are omitted. In Kansas the third sentence, which provides for a conclusive presumption of delivery in favor of a holder in due course, is omitted. In South Dakota the sentence beginning with the word "But" and ending with the word "presumed" is omitted and the following sentence substituted: "An indorsee of a negotiable instrument in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it."

The section of the Law is declaratory largely of the preponderance of authority prior to its adoption in the various jurisdictions; that is, that one who had purchased for value, in good faith, in the usual course of business, and before maturity, a negotiable instrument complete upon its face, and not avoided by forgery or statutory prohibition, had good title in the person from whom he had taken it, even though such person might have acquired it by fraud, by theft or by robbery. Some jurisdictions had held that a bona fide holder could not recover because taken away from the maker without his consent and had never been delivered by him to any one for any purpose; and others had held that the maker or drawer was not liable in any such case, whether completed or incomplete, unless it could be shown that the

<sup>21</sup> Neg. Inst. Law, § 16, where all cases directly or indirectly bearing upon or citing the Law are grouped.

As to stolen paper see note 13 U. S. L. Ed. 266.

possession of the undelivered instrument had been obtained through his culpable negligence.

The above section of the Law provides that under certain circumstances the delivery may be shown to have been conditional. This was the rule in most jurisdictions before the adoption of the Law and parol evidence of such a condition was not deemed an attempt to vary or contradict the written contract.<sup>22</sup> Neither the Negotiable Instruments Law nor the Statute of Frauds requires that a contract of conditional delivery shall be in writing.<sup>23</sup>

§ 54. Value received. Value received is not necessary to be expressed in a negotiable instrument.<sup>24</sup> Although these words are well nigh universal in negotiable bills and notes, they are in no wise necessary to them. Their omission is unimportant, because the negotiable instrument itself imports a consideration.<sup>24</sup>

*"The validity and negotiable character of an instrument are not affected by the fact that it does not specify the value given, or that any value has been given therefor."*<sup>25</sup>

§ 55. As to the agreement controlling the operation. There are two kinds of agreements which control the operation of bills and notes, which are designated as memoranda on the face or back of the instrument<sup>26</sup> and collateral or independent agreements.<sup>27</sup> The advantage of having a memorandum on the bill or note is that it will furnish actual or constructive notice to all subsequent holders, whereby it will control the operation or character of the instrument,<sup>28</sup> whereas a collateral agreement can only control the operation or character of the instrument as to those parties who have received actual notice of its existence. Only such memorandum as does actually affect the char-

<sup>22</sup> Niblack v. Sprague, 200 N. Y. 390; Hodge v. Smith, 130 Wis. 326. *Contra*, — Ind. —.

<sup>23</sup> Norman v. McCarthy, 56 Colo. 290.

<sup>24</sup> Carnwright v. Gray, 127 N. Y. 92, 27 N. E. 835, 24 Am. St. Rep. 424, 12 L. R. A. 845; Hubble v. Fogartie, 3 Rich. (S. C.) 413, 45 Am. Dec. 775; Clarke v. Marlow, 20 Mont. 249, 50 Pac. 713. See note 12 L. R. A. 846.

<sup>24</sup> Jones v. Berryhill, 25 Ia. 289; Kendall v. Galvin, 15 Me. 131, 32 Am. Dec. 141; Carnwright v. Gray, 127 N. Y. 92, 27 N. E. 835, 24 Am. St. Rep. 424, 12 L. R. A. 845.

<sup>25</sup> Neg. Inst. Law, § 6, subd. 2,

where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>26</sup> Specht v. Beindorf, 56 Neb. 553, 76 N. W. 1059, 42 L. R. A. 429; Nat. Bank of Commerce v. Feeney, 12 S. D. 156, 80 N. W. 186, 76 Am. St. Rep. 594, 46 L. R. A. 732.

<sup>27</sup> Babbitt v. Moore, 51 N. J. L. 229, 17 Alt. 99; Wood v. Ridgeville College, 114 Ind. 320, 16 N. E. 619; Murphy v. Farley, 124 Ala. 279, 27 So. 442; Wooters v. Foster, 1 Tex. App. Civ. Cas. 700.

<sup>28</sup> Wait v. Pomeroy, 20 Mich. 425, 4 Am. Rep. 345; Farmers Bank v. Ewing, 78 Ky. 264, 39 Am. Rep. 231.

acter and control the operation of the instrument will be considered to be a part of the bill or note.

Nor can the memorandum be treated as a part of the bill or note where it is so ambiguous and repugnant to the other contents that parol evidence is necessary to explain its import, or where the agreement is repugnant to the assignment or transfer of the instrument.<sup>30</sup> Where the memorandum is added to the bill or note after its negotiation, with the consent of both parties, it will constitute a part of the instrument, controlling its operation, but if it is added without the consent of all the parties, it will be an alteration which will invalidate the bill or note.<sup>30</sup> Collateral agreements entered into contemporaneously with the execution and negotiation of the instrument must be in writing in order to be valid and control the operation of such bill or note.<sup>31</sup> Subsequent agreements which change the terms of bills and notes already delivered must be based upon a sufficient consideration and be fully executed or performed in order to control the operation of the instrument as to all parties who have notice of the collateral agreement.<sup>32</sup> The most common collateral agreement is that of renewing the bill or note. If the renewal is contemporaneous with the instrument it must be in writing; and if subsequent it must be supported by a sufficient consideration.<sup>33</sup>

A note which contains a statement to the effect that the maker has deposited collateral security for its payment does not thereby lose its character of negotiability nor does the fact that a note is received with collaterals affect such negotiability.<sup>34</sup>

The Negotiable Instruments Law provides: " \* \* \* *But the negotiable character of an instrument otherwise negotiable is not affected by a provision which: 1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity.*"<sup>34a</sup>

This and other matters as to collateral security are more fully discussed in a subsequent chapter of this work.

<sup>30</sup> Way v. Batchelder, 129 Mass. 361; Leland v. Parriott, 35 Ia. 454.

<sup>30</sup> Tuckerman v. Hartwell, 3 Me. 147, 14 Am. Dec. 225.

<sup>31</sup> Noell v. Gains, 68 Mo. 649; Polo Mfg. Co. v. Parr, 8 Neb. 379, 30 Am. Rep. 830.

<sup>32</sup> Dow v. Tuttle, 4 Mass. 414, 3 Am. Dec. 226; Allen v. Furbish, 4 Gray 504, 64 Am. Dec. 87.

<sup>33</sup> Lime Rock Bank v. Mallett, 34 Me. 547, 56 Am. Dec. 673; Central Bank v. Willard, 17 Pick. 150, 28 Am. Dec. 284.

<sup>34</sup> Gilford v. Minneapolis etc. Ry. Co., 48 Minn. 560, 51 N. W. 658, 31 Am. St. Rep. 694; Valley Bank v. Crowell, 148 Pa. St. 284, 23 Atl. 1068, 33 Am. St. Rep. 824.

<sup>34a</sup> Neg. Inst. Law, § 5, subd. 1.



**§ 56. Days of grace.** As to days of grace the Negotiable Instruments Law provides:<sup>35</sup>

*"Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday."*<sup>35a</sup>

Many of the states have made changes in the above section of the Law and the different readings should be consulted in Part III of this work where all the changes are set out under this section.

Where such law is not in force grace is a short period of time, extended by the written law to instruments not payable on demand,<sup>36</sup> to enable the parties to provide payment. It arose before the age of steam, when communication was slow and often difficult. It is said to have been a mere matter of indulgence at first, at the holder's election. The rule is peculiar to the law merchant; and since the reason for it has mostly ceased, it has been abolished by statute in most jurisdictions.

Days of grace are days added to the nominal time of payment of all bills or notes except those impliedly or expressly payable on demand, and are computed by excluding the day of date and including the day of payment.<sup>37</sup> When granted at all they are usually for three days. But as stated above days of grace have been abolished by statute in most jurisdictions.

**§ 56a. As to payable at a bank.** It is provided in the Negotiable Instruments Law as follows: *"Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon."*<sup>37a</sup>

It will be noted that a few of the states have omitted this section among them being, Illinois, Kansas, Nebraska and South Dakota. In Missouri and New Jersey amendments have been made. There was a conflict of authority as to the right or

<sup>35</sup> Neg. Inst. Law, § 85, where all cases directly or indirectly bearing upon or citing the Law are grouped. See also notes 5 U. S. L. Ed. 215 and 6 U. S. L. Ed. 512.

<sup>35a</sup> Neg. Inst. Law, § 85.

<sup>36</sup> Davenport First Nat. Bank v. Price, 52 Ia. 750, 3 N. W. 639;

Thompson v. Ketchum, 8 Johns. (N. Y.) 190, 5 Am. Dec. 332.

<sup>37</sup> Thomas v. Shoemaker, 6 Watts (Pa.) 179; Tassell v. Lewis, 1 Ld. Raym. 743.

<sup>37a</sup> Neg. Inst. Law, § 87, where all cases directly or indirectly bearing upon or citing the Law are grouped.

authority of a bank to do this before the adoption of the Negotiable Instruments Law.

§ 57. **As to stamps.** It seems that the first stamp duties were those levied by Holland in 1624 for the purpose of raising revenues for the prosecution of war against Spain. The first stamp duties levied in England were in 1694 and were employed to wage war against France. Some of the states of the Union have at different periods passed an Act imposing stamp duties on certain negotiable instruments. The first Act of a similar nature passed by the Federal Government was in 1862 during the war of the rebellion.<sup>38</sup> This Act imposed a tax upon deeds, bills, notes, checks and other evidences of indebtedness.<sup>39</sup>

This act was subsequently repealed from which time no stamp duties on these instruments were required until 1898 when the War Revenue Act was passed. This act imposed a stamp tax upon bills of exchange, promissory notes, money orders, certificates of deposit, warehouse receipts, bills of lading and other evidences of indebtedness. In 1901 this act was repealed except as to bills of exchange and in 1902 it was repealed as to these.

The present law is the Act of October 22nd, 1914, and contains no provision as in some of the previous acts making an unstamped instrument void.<sup>39a</sup>

This matter is more fully considered in a later section of this work <sup>39b</sup>

§ 58. **As to blanks.** Frequently bills of exchange and promissory notes are executed in blank and delivered to another to fill in and negotiate, either for his own benefit or that of the maker. The person to whom these instruments are delivered in blank with authority to fill the blanks is constituted the agent of the maker or principal.<sup>40</sup> There is no need of a second delivery by the maker after the blanks have been filled because the validity of the paper after its completion will relate back to the delivery by the maker or drawer. It may be, however, that the authority of the person to whom the instrument is delivered is limited to filling the blanks in a particular way, and in such case, if he exceeds his express authority, of course neither he nor any holder, with knowledge that the authority has been exceeded, can re-

<sup>38</sup> U. S. Rev. Stat. at L. 432.

<sup>39b</sup> See § 141.

<sup>39</sup> Jones v. Jones, 38 Cal. 584; Merchants Nat. Bank v. Boston etc. Bank, 10 Wall. (U. S.) 604, 19 L. Ed. 1008; Pugh v. McCormick, 14 Wall. (U. S.) 361, 20 L. Ed. 789.

<sup>39a</sup> Cole v. Ralph, 252 U. S. 286.

<sup>40</sup> Radlich v. Dall, 54 N. Y. 234; Winter v. Poole, 104 Ala. 580, 16 So. 543; Market etc. Nat. Bank v. Sargent, 85 Me. 349, 27 Atl. 192, 35 Am. St. Rep. 376. See also note 1 L. R. A. 648.

cover.<sup>41</sup> But any one purchasing the instrument as filled in, in reliance upon its terms, would be protected. Moreover, a *bona fide* purchaser is protected, and may enforce the instrument as filled in even if he had knowledge that the instrument had been delivered in its imperfect state, for he may rely upon the apparent authority of the person to whom it was delivered to fill in the blank as he sees fit, and as against such a holder the fact that the actual authority was exceeded is no defense.<sup>42</sup>

The Negotiable Instruments Law states:

*"Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time."*<sup>43</sup>

The authority under this section is only to complete the instrument, for while there is an authority to fill up blanks in order to make the instrument complete as such, there is no authority to insert a special agreement not essential to the completeness of the instrument.<sup>43a</sup>

**§ 59. As to instruments bearing a seal.** The mere attaching a seal to the instrument does not necessarily make it a sealed instrument. In addition to this there must be some reference in the instrument, itself, to the seal to bring it within the purview of sealed instruments.<sup>44</sup>

<sup>41</sup> Clower v. Wynn, 59 Ga. 246; Wagner v. Deidrich, 50 Md. 484; McCoy v. Gilmore, 7 Ohio 268.

<sup>42</sup> Farmers Bank v. Garten, 34 Mo. 119; Merritt v. Boyden, 191 Ill. 136, 60 N. E. 907, 85 Am. St. Rep. 246; Market etc. Bank v. Sargent, 85 Me. 349, 27 Atl. 192, 35 Am. St. Rep. 376. See notes 16 U. S. L. Ed. 323 and 13 L. R. A. (N. S.) 490.

<sup>43</sup> Neg. Inst. Law, § 14, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>43a</sup> Weyerhouser v. Dunn, 100 N. Y. 150.

<sup>44</sup> Woodman v. York etc. Ry. Co., 50 Me. 549; Royal Bank v. Grand Junction Ry. etc. Co., 100 Mass. 444, 97 Am. Dec. 115. As to effect of seal see note 35 L. R. A. 605.

*"The validity and negotiable character of an instrument are not affected by the fact that it bears a seal."<sup>45</sup>*

§ 60. The several parts of a foreign bill called a set. The following is a common form of foreign bill of exchange in a set:

£300	Troy, N. Y., U. S. A., August 31, 1922.
	First. Exchange for London.
	Thirty days after sight of the First of Exchange (Second and Third Unpaid) pay to the order of JOHN BALES Three Hundred Pounds Sterling, value received and charge the same to account of
	ORNAN BARKER.
	To Green & Co., London, Eng.

£300	Troy, N. Y., U. S. A., August 31, 1922.
	Second. Exchange for London.
	Thirty days after sight of this Second of Exchange (First and Third Unpaid) pay to the order of JOHN BALES Three Hundred Pounds Sterling, value received and charge the same to account of
	ORNAN BARKER.
	To Green & Co., London, Eng.

£300	Troy, N. Y., U. S. A., August 31, 1922.
	Third. Exchange for London.
	Thirty days after sight of this Third of Exchange (First and Second Unpaid) pay to the order of JOHN BALES Three Hundred Pounds Sterling, value received and charge the same to account of
	ORNAN BARKER.
	To Green & Co., London, Eng.

<sup>45</sup> Neg. Inst. Law, § 6, subd. 4, rectly' bearing upon or citing the where all cases directly or indi- Law are grouped.

In order to avoid delay and inconvenience which may result from the loss or miscarriage of a foreign bill, it is a common custom, particularly in bills drawn on Europe and other distant countries, for the drawer to issue several copies of the bill as above, which are called a set of exchange, and together constitute one bill.

*"Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill."*<sup>46</sup>

Either copy of the bill may be negotiated, and when any one of them is accepted and paid, all others are extinguished, even against *bona fide* purchasers, so far as the drawer is concerned, although the payee is liable to each person, to whom he has transferred a copy of the bill.<sup>47</sup> The drawee should accept only one of the copies, and pay the amount of the bill, when the part which he has accepted is presented for payment. If he accepts more than one copy, he will be liable to *bona fide* purchasers on as many copies on which he has written his acceptance.<sup>48</sup> But any copy may be presented for acceptance, and the drawee may accept any copy.

*"Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him."*<sup>49</sup>

*"Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if such parts were separate bills."*<sup>50</sup>

*"The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill."*<sup>51</sup>

*"When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to*

<sup>46</sup> Neg. Inst. Law, § 178, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>47</sup> Riggin v. Collier, 6 Mo. 568; Yale v. Ward, 30 Tex. 17.

<sup>48</sup> Wright v. McFall, 8 La. Ann. 120; Holdsworth v. Hunter, 10 B. & C. 449.

<sup>49</sup> Neg. Inst. Law, § 179, where all cases directly or indirectly bear-

ing upon or citing the Law are grouped.

<sup>50</sup> Neg. Inst. Law, § 180, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>51</sup> Neg. Inst. Law, § 181, where all cases directly or indirectly bearing upon or citing the Law are grouped.

*him and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon."*<sup>52</sup>

*"Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged."*<sup>53</sup>

<sup>52</sup> Neg. Inst. Law, § 182, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>53</sup> Neg. Inst. Law, § 183, where all cases directly or indirectly bearing upon or citing the Law are grouped.

## CHAPTER VII.

### CONSIDERATION OF NEGOTIABLE INSTRUMENTS.

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|--|---|
| § 61. Meaning of term.                               | § 68. Want or failure of consideration.                   |
| 62. Consideration in general.                        | 69. Between whom question of consideration may be raised. |
| 63. Necessity of consideration.                      | 70. As to accommodation paper.                            |
| 64. Presumption of consideration.                    |   |
| 65. Sufficiency of consideration.                    |   |
| 66. Inadequacy of consideration.                     |   |
| 67. Illegal, immoral, and fraudulent considerations. |   |

§ 61. **Meaning of term.** In general, consideration means inducement to a contract, that is, the cause, motive, price or impelling influence which induces a contracting party to enter into a contract. It means the reason or material cause of a contract.<sup>1</sup>

That is, by consideration is meant a benefit or gain of some kind to the party making the promise, or a loss, detriment or injury of some kind to the party to whom the promise is made.<sup>2</sup>

§ 62. **Consideration in general.** The Negotiable Instruments Law provides:

*"Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time."*<sup>3</sup>

Valuable consideration may, "in general terms, be said to consist either in some right, interest, profit or benefit, accruing to the party who makes the contract, or some forbearance, detriment, loss, responsibility, or act, or labor, or service, on the other side. And, if either of these exists, it will furnish a sufficient valuable

<sup>1</sup> *Roberts v. City of New York*, 5 Abb. Prac. 41, 49; *Streshley v. Powell*, 51 Ky. (12 B. Mon.) 178, 180.

<sup>2</sup> *Eastman v. Miller*, 113 Ia. 404, 85 N. W. 635; *St. Marks Church v. Teed*, 120 N. Y. 583, 24 N. E. 1014, 1015; *Chicora Fert. Co. v.*

*Dunan*, 91 Md. 144, 46 Atl. 347, 50 L. R. A. 401.

<sup>3</sup> *Neg. Inst. Law*, § 25, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to antecedent debt as consideration, see note 1 *Am. St. Rep.* 136.

consideration to sustain the making or indorsing of a promissory note in favor of the payee or other holder."<sup>4</sup>

So there may be sufficient consideration to support a note, although the payee does not actually give anything of value to the promisor, it will be sufficient if there is any damage or detriment to the payee, although no actual benefit accrued to the promisor.<sup>4a</sup>

In general a valuable consideration as applied to the law of commercial paper is any consideration sufficient to support a simple contract. Thus a cross acceptance,<sup>5</sup> the forbearance of a debt of a third person,<sup>6</sup> the compromise of a disputed liability<sup>7</sup> or a debt barred by the statute of limitations,<sup>8</sup> are held to constitute a valuable consideration.

Where a person has a valid and subsisting right or interest in property, a waiver or release thereof is a sufficient consideration for a promissory note made to such person.<sup>9</sup>

If a claim is clearly illegal and unfounded and no proceedings have been instituted thereon, a note given in settlement thereof is however without consideration.<sup>10</sup> If there be any reasonable doubt about the validity of the claim, a compromise thereof is a sufficient consideration for a note, and in an action on such a note the invalidity of the claim compromised cannot be asserted.<sup>11</sup> Ignorance of the maker's rights in respect to an alleged liability will not affect the validity of a note given on account of such liability.<sup>12</sup> A note given by the treasurer of a corporation in consideration of the discharge of a disputed claim against such corporation is valid.<sup>13</sup>

The Negotiable Instruments Law provides, as above set out, that an antecedent or pre-existing debt is a valuable consideration in support of a bill or note when the bill is received in absolute payment of the original debt, yet if received for nothing

<sup>4</sup> Story on Promissory Note, § 186; *Currie v. Misa*, L. R. 10 Exch. 153, 162.

<sup>4a</sup> *Ableman v. Haehnel*, 57 Ind. App. 15, 103 N. E. 869.

<sup>5</sup> *Backus v. Spalding*, 116 Mass. 418; *Dockray v. Dunn*, 37 Me. 442.

<sup>6</sup> *Thompson v. Gray*, 63 Me. 376; *Harris v. Harris*, 180 Ill. 157, 54 N. E. 180.

<sup>7</sup> *Wyatt v. Evins*, 52 Ala. 285; *Jones v. Ritterhouse*, 87 Ind. 348; *Feeter v. Weber*, 78 N. Y. 334.

<sup>8</sup> *Way v. Sperry*, 6 Cush. 238; *Giddings v. Giddings*, 51 Vt. 227.

<sup>9</sup> *Sykes v. Laferry*, 27 Ark. 407; *Bradbury v. Blake*, 25 Me. 397.

<sup>10</sup> *Bullock v. Ogden*, 13 Ala. 346; *Tucker v. Ronk*, 43 Ia. 80; *Fuller v. Green*, 64 Wis. 159, 24 N. W. 907, 54 Am. Rep. 600.

<sup>11</sup> *Tyson v. Woodruff*, 108 Ga. 368, 33 S. E. 981; *Keefe v. Vogle*, 36 Ia. 87; *Easton v. Easton*, 112 Mass. 438.

<sup>12</sup> *Bennett v. Ford*, 47 Ind. 264; *Daily v. Jessup*, 72 Mo. 144; *Mory v. Laird*, 108 Ia. 670, 77 N. W. 835.

<sup>13</sup> *National Bank v. Foster*, 85 Hun 376, 32 N. Y. S. 1031.



but a conditional payment, the holder's rights will be determined by a subsequent rule governing the bills taken as collateral security. In some jurisdictions as in Illinois the above section of the statute is changed to read as follows: "An antecedent or pre-existing claim, whether for money or not, constitutes value where an instrument is taken either in satisfaction therefor or as security therefor, and is deemed such, whether the instrument is payable on demand or at a future time."

While in some other jurisdictions, as in Wisconsin, the statute provides that the "antecedent or pre-existing debt" must be discharged, extinguished or extended" and adds: "But the indorsement or delivery of negotiable paper as collateral security for a pre-existing debt, without other consideration, and not in pursuance of an agreement at the time of delivery, by the maker, does not constitute value." A promissory note given by the maker, in exchange for a promissory note given by the payee, is for a valuable consideration, and is in no sense an accommodation paper, although made for the mutual accommodation of the parties.<sup>14</sup> A consideration founded on love and affection, as that naturally existing between husband and wife, father and son, etc., or upon gratitude, is known as a good consideration, as distinguished from a valuable consideration, and is not of itself sufficient to support the obligation of a bill or note as between the original parties thereto,<sup>15</sup> and the promise to pay an already existing debt, or the actual payment thereof, is not "value" within the meaning of the above section of the statute.<sup>15a</sup>

A note may be given for services to be rendered, and upon the rendition of the services the consideration becomes complete and will be sufficient to sustain the validity of the note even if the services are not equal in value to the amount of the note. Services rendered out of kindness, and without expectation of reward, although of value, are not a sufficient consideration to support a note.<sup>16</sup> But the consideration is not affected by the fact that the services were rendered without an express promise to pay.<sup>17</sup>

<sup>14</sup> Farber v. National Forge Co., 140 Ind. 54, 39 N. E. 249; Williams v. Banks, 11 Md. 198; Backus v. Spalding, 116 Mass. 418.

<sup>15</sup> Fink v. Cox, 18 Johns. (N. Y.) 145, 9 Am. Dec. 191; In re Campbell Estate, 7 Pa. St. 100, 47 Am. Dec. 503; Kerns' Estate, 171 Pa. St. 55, 33 Atl. 129.

<sup>15a</sup> Morris County Brick Co. v. Austin, 79 N. J. Law, 273.

<sup>16</sup> Miller v. McKenzie, 95 N. Y. 575, 47 Am. Rep. 85; Coe v. Smith, 1 Smith (Ind.) 88; Mitcherson v. Dozier, 7 J. J. Marsh (Ky.) 53, 22 Am. Dec. 116.

<sup>17</sup> Root v. Strang, 77 Hun 14, 28 N. Y. S. 273; Gramwell v. Mosley, 11 Gray 173.

An agreement to marry, which is afterward fulfilled, is a sufficient consideration for a note made by the intended husband;<sup>18</sup> and notes given for establishing such public institutions as churches, schools and hospitals, are supported by a sufficient consideration.<sup>18a</sup> So when a number of persons subscribe an instrument, whereby they agree to pay certain sums of money, severally, to be expended in the erection of a college building, their mutual promises constitute a sufficient consideration for the promise of each.<sup>18b</sup> And it has been held that while notes which are given by one or more persons to any corporation or other legal person, or any trustees by way of voluntary subscription, to raise a fund to promote an object, may be open to the defense of want of consideration, yet the instruments are enforceable if it appears that the donee has, prior to any revocation, entered into engagements or made expenditures based on such promises, so that he must suffer loss or injury if the note is not paid.<sup>18c</sup>

Cross-notes, bills or checks are good consideration for each other; such are given for the mutual accommodation of the parties thereto, or of one of them, in which the maker and payee of one are respectively the payee and maker of the other, and a similar relationship exists as between acceptors of cross-bills of exchange or the makers of cross-checks.<sup>18d</sup>

An agreement or promise to make a gift in the future, not being based upon a valuable consideration, is not enforceable, even when put in the form of a promissory note;<sup>19</sup> thus gift notes are not supported by sufficient consideration; the donor's own note or bill of exchange is not a good subject or gift either *inter vivos* or *causa mortis*. Such a gift is but a promise to pay a sum certain at a future day and cannot be enforced either at law or in equity.<sup>19a</sup> A mere moral obligation is not a sufficient consideration to support a promissory note between the parties to such obligation.<sup>20</sup> Forbearance to prosecute a legal claim is a sufficient consideration to support a promissory note.<sup>21</sup>

<sup>18</sup> Wright v. Wright, 54 N. Y. 437; Prescott v. Ward, 10 Allen (Mass.) 203; Blanshaw v. Russell, 52 N. Y. S. 963.

<sup>18a</sup> Johnston v. The Wabash College, 2 Ind. 555.

<sup>18b</sup> Hicott v. The Trustees of Indiana Asbury University, 53 Ind. 326.

Note in 52 L. R. A. (N. S.) 220.

<sup>18c</sup> Beatty's Estate v. Western College of Toledo, Iowa, 177 Ill. 280, 52 N. E. 432, 69 A. S. R. 242, 42 L. R. A. 797.

<sup>18d</sup> American National Bank v. Patterson, 145 La. —, 82 So. 218, 7 A. L. R. 1563.

See note in 7 A. L. R. 1563, at p. 1569.

<sup>19</sup> Williams v. Forbes, 114 Ill. 167, 28 N. E. 463; Johnston v. Griest, 85 Ind. 503; Ricketts v. Scothern, 57 Neb. 51, 77 N. W. 365.

<sup>19a</sup> Harmon v. James, 7 Ind. 263.

<sup>20</sup> Nightingale v. Barney, 4 G. Greene (Ia.) 106; Nash v. Russell, 5 Barb. (N. Y.) 556.

<sup>21</sup> Anstell v. Rice, 5 Ga. 472; Jen-

Receiving a bill or note as security for a debt<sup>22</sup> or forbearance to sue upon a present claim or debt,<sup>23</sup> or the dismissal of a pending suit,<sup>24</sup> or the surrender of a prior valid note,<sup>25</sup> or becoming a surety,<sup>26</sup> or giving an extension of time to an imputed debtor,<sup>27</sup> or doing any act at the request of the drawer, indorser, or acceptor, will be sufficient consideration for a bill or note. An extension of time upon an indebtedness is sufficient consideration for a promissory note given as collateral therefor.<sup>28</sup>

A fluctuating balance may form a consideration for a bill or note.<sup>29</sup> As where bills or notes are deposited as a security for the balance of an account current, the successive balances form a shifting consideration for the bill or note.<sup>30</sup> But where the account has been settled or transferred prior to the execution of the note, the consideration of course fails, and the note is invalid.<sup>31</sup> ;

The Negotiable Instruments Law provides:

*"Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien."*<sup>31a</sup>

One who has taken a negotiable instrument as collateral security has a lien upon it and is within the terms of the last named section of the statute.<sup>31b</sup>

The holder of collateral security, that is, the pledgee is, in general, entitled to recover the full amount due on the instrument, with liability to account for the surplus to the pledgor,<sup>31c</sup>

nison v. Stafford, 1 Cush. (Mass.) 168, 48 Am. Dec. 55; Lavell v. Frost, 16 Mont. 93, 40 Pac. 146.

<sup>22</sup> Youngs v. Lee, 12 N. Y. 551; Bank of Rochester v. Bentley, 27 Minn. 87, 6 N. W. 422; Allaire v. Hartshorne, 21 N. J. L. 665.

<sup>23</sup> Worcester Nat. Bank v. Chee-ney, 87 Ill. 602.

<sup>24</sup> Wyatt v. Evins, 52 Ala. 285; Brown v. Ladd, 144 Mass. 310; 10 N. E. 839; Spielberger v. Thompson, 131 Cal. 55, 63 Pac. 132.

<sup>25</sup> Youngs v. Lee, 12 N. Y. 551; Stevens v. Campbell, 13 Wis. 375; Bank of Rochester v. Bentley, 27 Minn. 87, 6 N. W. 422; Whelan v. Swain, 132 Cal. 389, 64 Pac. 560.

<sup>26</sup> Harrell v. Tenant, 30 Ark. 684; Pauly v. Murray, 110 Cal. 13, 42 Pac. 313; Gay v. Mott, 43 Ga. 252.

<sup>27</sup> Brainerd v. Harris, 14 Ohio 107, 45 Am. Dec. 525; Ballard v.

Burton, 64 Vt. 387, 24 Atl. 769, 16 L. R. A. 664; Whelan v. Swain, 132 Cal. 389, 64 Pac. 560.

<sup>28</sup> Ballard v. Burton, 64 Vt. 387, 24 Atl. 769, 16 L. R. A. 664; Brainard v. Harris, 14 Ohio 107, 45 Am. Dec. 525.

<sup>29</sup> Perse v. Hirst, 10 B. & C. (Eng.) 122; Richards v. Macy, 14 M. & W. (Eng.) 484.

<sup>30</sup> Atwood v. Crowdie, 1 Starke (Eng.) 483.

<sup>31</sup> Johnson v. Mitchell, 14 Colo. 227, 23 Pac. 452; First Nat. Bank v. Henry, 156 Ind. 1, 58 N. E. 1057.

<sup>31a</sup> Neg. Inst. Law, § 27 and cases cited.

<sup>31b</sup> Bruster v. Shrader, 26 Misc. Rep. (N. Y.) 480; Wilkins v. Usher, 133 Ky. 696.

<sup>31c</sup> Camden National Bank v. Fries-Breslin Co., 214 Pa. St. 395.

but if the pledgor could not recover upon the instrument, then the extent of the recovery will be limited to the amount of the debt due to the pledgee; and even though the principal obligation is not due at the time of bringing suit on the collateral, the pledgee has a right to enforce the collection of the collateral.<sup>314</sup>

§ 63. **The necessity of consideration.** By the common law a promise made without consideration was invalid, and in order to enforce any contract, it was necessary to aver and prove a consideration.

The most ancient exception to this rule was made in reference to a promise under seal, the solemn act of the party in attaching a seal to the evidence of his contract being regarded as importing or excusing a consideration and estopping him from denying it. The necessities of trade soon produced another relaxation of the rule; and by the usage and custom of merchants, bills of exchange and promissory notes came to be regarded as *prima facie* evidence of consideration; and peculiar qualities were accorded to them which were possessed by no other securities for debt.

It is presumed that every negotiable instrument was given upon a valuable consideration, and words acknowledging receipt of consideration are not essential to the validity of the paper.

If the instrument sued on is negotiable, it is unnecessary to aver or prove consideration, for it is imported and presumed from the fact that it is a negotiable instrument.<sup>32</sup> But if the paper does not possess the quality of negotiability, it does not, *per se*, import a consideration,<sup>33</sup> and it must be averred and proved unless it be stated on its face that it was given for "value received," or contains some other equivalent expression, in which case it would be *prima facie* evidence of consideration.<sup>34</sup>

As between the immediate parties to a negotiable instrument, an actual, valid and valuable consideration cannot be dispensed with.<sup>35</sup> In such case the presumption as to the validity and value

<sup>314</sup> *Elk Valley Coal Co. v. Third Nat. Bank*, 157 Ky. 617.

<sup>32</sup> *Germania Bank v. Michaud*, 62 Minn. 459, 65 N. W. 70, 54 Am. St. Rep. 653, 30 L. R. A. 286; *Adams v. Hackett*, 27 N. H. 289, 59 Am. Dec. 376; *Perot v. Cooper*, 17 Colo. 80, 28 Pac. 391, 31 Am. St. Rep. 258.

<sup>33</sup> *Bristol v. Warner*, 19 Conn. 7; *Siddle v. Anderson*, 45 Pa. St. 464; *Averett v. Booker*, 15 Gratt. (Va.) 163, 76 Am. Dec. 203.

<sup>34</sup> *Conrad Seipp Brewing Co. v. McKittrick*, 86 Mich. 191, 48 N. W. 1086; *Averett v. Brooker*, 15 Gratt. 163, 76 Am. Dec. 203; *Cowee v. Cornell*, 75 N. Y. 91, 31 Am. Rep. 428; *Rowland v. Harris*, 55 Ga. 141.

<sup>35</sup> *Catlin v. Horne*, 34 Ark. 169; *Roberts v. Million*, 17 Ky. L. Rep. 599, 32 S. W. 320; *Hildeburn v. Curran*, 65 Pa. St. 59.

of the consideration only affects the proof; the burden of proof being thereby shifted from the person to whom the instrument is payable to the person who is liable thereon.<sup>36</sup> In seeking to recover on a simple contract, it is a general rule that the plaintiff must allege and prove that the contract was made on a valuable consideration. But to this rule commercial paper is an exception. It would seem then that as between a promisor and a promisee of a promissory note, or the drawer and drawee of a bill of exchange, a lack of legal consideration would be a good defense in an action on such note or bill.<sup>37</sup> As between immediate parties, the ordinary rules of contracts as to consideration prevail, such as that the consideration must be valuable<sup>38</sup> as distinguished from merely good,<sup>39</sup> that it need not be entirely adequate,<sup>40</sup> and that it must not be illegal.<sup>41</sup>

**§ 64. Presumption of consideration.** Bills of exchange and promissory notes like simple contracts under seal or executed pursuant to a statute, import a consideration.<sup>42</sup> The presumption of a consideration is of much importance in business transactions, and should not be lightly disregarded in favor of those who have carelessly, or by being unduly confiding, set afloat commercial paper.<sup>42a</sup> There are some decisions which hold that a non-negotiable instrument does not import a consideration unless it is so declared by statute.<sup>43</sup> Some other decisions hold that a non-negotiable instrument also imports a consideration.<sup>44</sup>

<sup>36</sup> *Stevens v. McLachlan*, 120 Mich. 285, 79 Am. Dec. 627; *Newton v. Newton*, 77 Tex. 508, 14 S. W. 157; *Dalrymple v. Wyker*, 60 Ohio St. 108, 53 N. E. 713; *Perot v. Cooper*, 17 Colo. 80, 28 Pac. 391, 31 Am. St. Rep. 258.

<sup>37</sup> *Fisher v. Salmon*, 1 Cal. 413, 54 Am. Dec. 297; *Kelley v. Guy*, 116 Mich. 43, 74 N. W. 291; *Williams v. Culver*, 30 Ore. 375, 48 Pac. 365.

<sup>38</sup> *Irwin v. Lombard Uni.*, 56 Ohio St. 9, 36 L. R. A. 239, 60 Am. St. Rep. 239, 46 N. E. 63; *Holt v. Robinson*, 21 Ala. 106; *Currie v. Misa*, L. R. 10 Exch. 153.

<sup>39</sup> *Pierce v. Walton*, 20 Ind. App. 66, 53 N. E. 309; *Potter v. Gracie*, 58 Ala. 313, 29 Am. Rep. 748.

<sup>40</sup> *Cowee v. Cornell*, 75 N. Y. 91, 31 Am. Rep. 428; *Wheelock v. Barney*, 27 Ind. 462; *Kitchen v. Lou-*

*denback*, 48 Ohio St. 177, 26 N. E. 979, 29 Am. St. Rep. 540.

<sup>41</sup> *Ketchum v. Scribner*, 1 Root (Conn.) 95; *Parsons v. Randolph*, 21 Mo. App. 353; *Brisbane v. Lestartjette*, 1 Bay (S. C.) 113.

<sup>42</sup> *Brown v. Johnson Bros.*, 135 Ala. 608, 33 So. 683; *Byrd v. Bertrand*, 7 Ark. 32; *Fuller v. Hutchins*, 10 Cal. 523, 70 Am. Dec. 746; *Carnwright v. Gray*, 127 N. Y. 92, 27 N. E. 835, 24 Am. St. Rep. 424, 12 L. R. A. 845. See note 5 U. S. L. Ed. 87.

<sup>42a</sup> *Lassas v. McCarty*, 47 Ore. 474.

<sup>43</sup> *Tibbets v. Thatcher*, 14 Ind. 86.

<sup>44</sup> *Carnwright v. Gray*, 127 N. Y. 92, 27 N. E. 835, 24 Am. St. Rep. 424, 12 L. R. A. 845; *Caples v. Branham*, 20 Mo. 244, 64 Am. Dec. 183; *Arnold v. Sprague*, 34 Vt. 402.

In those jurisdictions where it has been held that these instruments import a consideration it is unnecessary to use the words "Value received."<sup>45</sup> These words are surplusage and their omission does not in any way affect the legal import of the paper, or weaken the presumption that it was given for value.<sup>45a</sup> But in case of a non-negotiable instrument, they are important, for they amount to a *prima facie* admission that the instrument was issued for a sufficient consideration.<sup>45b</sup> If these words are included in the bill or note, the maker's or other person's right to defend on the ground of want of, failure of, or illegality of consideration is not affected.<sup>46</sup>

*"Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value."*<sup>47</sup>

**§ 65. Sufficiency of consideration.** Any act of the maker from which the acceptor derives a benefit or from which the maker may sustain any detriment or inconvenience, is a sufficient consideration to support a promise.<sup>48</sup> If there is no fraud in the transaction the fact that the consideration is not equal to the obligation incurred is no defense.<sup>49</sup> In such case if the consideration is not wanting at the time the obligation is incurred and does not fail in any part thereof afterwards, it is sufficient. If that which was given as a consideration for a promissory note is worthless it has been held that the maker cannot avail himself of it as a defense.<sup>50</sup> But if the worthlessness of the thing given in consideration for the note consists in a defect of title it may be used as a defense.<sup>51</sup>

**§ 66. Inadequacy of consideration.** It is not necessary that the consideration should be adequate to the obligation incurred

<sup>45</sup> *Salazar v. Taylor*, 18 Colo. 538, 33 Pac. 369; *Stacker v. Hewitt*, 2 Ill. 207.

<sup>45a</sup> *McLeod v. Hunter*, 29 Misc. (N. Y.) 559.

<sup>45b</sup> *Owen v. Blackburn*, 161 App. Div. (N. Y.) 827; *DuBosque v. Munroe*, 169 App. Div. (N. Y.) 821.

<sup>46</sup> *Bruyn v. Russell*, 60 Hun 290, 14 N. Y. S. 591; *Perley v. Perley*, 144 Mass. 104, 10 N. E. 726.

<sup>47</sup> *Neg. Inst. Law*, § 24, and cases there cited.

<sup>48</sup> *Holt v. Robinson*, 21 Ala. 106, 56 Am. Dec. 240; *Holley v. Adams*, 16 Vt. 206, 42 Am. Dec. 508.

<sup>49</sup> *Miller v. McKenzie*, 95 N. Y. 575; 47 Am. Rep. 85; *Boggs v. Wann*, 58 Fed. 681; *Root v. Strange*, 77 Hun 14, 28 N. Y. S. 273, 59 N. Y. St. 258; *Kitchen v. Loudonback*, 48 Ohio St. 177, 26 N. E. 979, 29 Am. St. Rep. 540.

<sup>50</sup> *Bryant v. Pember*, 45 Vt. 487; *Lester v. Webb*, 5 Allen (Mass.) 45; *Ried v. Prentiss*, 1 N. H. 174, 8 Am. Dec. 50.

<sup>51</sup> *Frisbie v. Hoffnagle*, 11 Johns. (N. Y.) 50; *Crawford v. Beard*, 4 J. J. Marsh. (Ky.) 187; *Scudder v. Andrews*, 2 McLean (U. S.) 464, 21 Fed. Cas. No. 12,564.

in order that the parties may be bound.<sup>53</sup> The only essential element in this respect is that the consideration must be a valuable one.<sup>53</sup> Thus in an action upon a promissory note given as the price of real or personal property, it will not avail as a defense to the note that the property conveyed was inadequate for the amount of the note.<sup>54</sup> The mere fact that a bargain is hard and unreasonable will not induce even a court of equity to interfere. The law presumes that a man is capable of managing his own affairs and the fact as to whether or not his bargains are wise or unwise is not a proper question for either a legal or equitable tribunal. While inadequacy of consideration is not of itself a sufficient ground for either legal or equitable relief yet it may be shown as evidence of fraud. Ordinarily the mere fact of inadequacy of consideration has very little weight, when standing alone, but coupled with other elements tending to show fraud it becomes a very material factor of constructive fraud.<sup>55</sup>

It has been generally held that a note for a patent right which is of no value, either because it is useless or because the patent is void, is without consideration and therefore not enforceable.<sup>56</sup> The fact that the vendor believed, at the time of the sale, that the patent was valid is not material.<sup>57</sup> It should be noticed, in this connection, that an invention which is not useful cannot be patented, and therefore a patent for a useless invention is void. If an invention is useful, in the sense that it may be applied to some practical or beneficial purpose, it is patentable, and the degree of its utility or practical value does not affect the validity of the patent. If there is a valid patent, in this sense, the court will not inquire into the adequacy of the consideration.<sup>58</sup>

§ 67. **Illegal, immoral and fraudulent consideration.** Where the consideration is illegal in whole or in part it is a defense against the entire note while in the hands of an immediate party or one who is not a *bona fide* holder for value without notice.

<sup>52</sup> Anstell v. Rice, 5 Ga. 472; Boggs v. Wann, 58 Fed. 681; Cowee v. Cornell, 75 N. Y. 91, 31 Am. Rep. 428.

<sup>53</sup> Holt v. Robinson, 21 Ala. 106, 56 Am. Dec. 240; Holley v. Adams, 16 Vt. 206, 42 Am. Dec. 508.

<sup>54</sup> Johnson v. Titus, 2 Hill (N. Y.) 606; Barnum v. Barnum, 8 Conn. 469, 21 Am. Dec. 689; Perley v. Balch, 23 Pick. (Mass.) 283, 34 Am. Dec. 56.

<sup>55</sup> Jones v. Degge, 84 Va. 685, 5

S. E. 799; Green v. Lowry, 38 Ga. 548; Abbe v. Newton, 19 Conn. 20.

<sup>56</sup> Tilson v. Gatling, 60 Ark. 114, 29 S. W. 35; Mooklar v. Lewis, 40 Ind. 1; Rowe v. Blanchard, 18 Wis. 441, 86 Am. Dec. 783.

<sup>57</sup> Lester v. Palmer, 4 Allen (Mass.) 145.

<sup>58</sup> Nash v. Lull, 102 Mass. 60, 3 Am. Rep. 435; Hildreth v. Turner, 17 Ill. 184; Harmon v. Bird, 22 Wend. (N. Y.) 113.

Common law considerations are illegal which (1) violate the rules of religion or morality, or (2) are such as contravene public policy.<sup>60</sup> Many acts in themselves immoral are made by statute illegal considerations for the support of commercial paper. A note given for future illicit cohabitation is invalid,<sup>61</sup> although if it be given in consideration of past cohabitation it is enforceable.<sup>62</sup> A note by a husband to his wife, upon the promise of the wife to withdraw all opposition to proceedings for divorce instituted by him, is founded upon an illegal consideration.<sup>63</sup>

A distinction is to be made between a consideration simply illegal and one which by statute expressly makes the bill void. In the former case a *bona fide* transferee may recover, though not in the latter.<sup>64</sup>

When the consideration for commercial paper is clearly fraudulent it is a good defense against an immediate party or a remote party unless he is an innocent holder for value.<sup>65</sup> If the instrument is yet in the hands of a party with notice a court of law will compel its surrender, or restrain its negotiation until the question of fraud is settled.<sup>66</sup>

**§ 68. Want or failure of consideration.** Want or failure of consideration is only a defense as against an immediate party or as against a remote party who is not a holder for value.<sup>67</sup> It is not a defense against a remote holder for value.

As between the original parties to a bill or note want of consideration then is a good defense, and this is so although the words "for value received" are contained in the instrument.<sup>68</sup> This want of consideration may be total or partial; in the former case it affects the entire validity *pro tanto*.<sup>69</sup> So also a failure

<sup>60</sup> Scott v. Magloughlin, 133 Ill. 33, 24 N. E. 1030; Hamilton v. Scull, 25 Mo. 165, 69 Am. Dec. 460; Powell v. Inman, 52 N. C. 28.

<sup>61</sup> Massey v. Wallace, 32 S. C. 149, 10 S. E. 937; Potter v. Gracie, 58 Ala. 303, 29 Am. Rep. 748.

<sup>62</sup> Brown v. Kinsey, 81 N. C. 245; People v. Hayes, 140 N. Y. 484, 33 N. E. 951.

<sup>63</sup> Sayles v. Sayles, 21 N. H. 312, 53 Am. Dec. 208; Bend v. Bend, 65 Cal. 354, 4 Pac. 229.

<sup>64</sup> Wheeler v. Russell, 17 Mass. 258; Vanmeter v. Spurrier, 94 Ky. 22, 21 S. W. 337; Whitman v. Freese, 23 Me. 185.

<sup>65</sup> Angier v. Brewster, 69 Ga. 362; Hickson v. Early, 62 S. C. 42, 39 S. E. 782; Von Windisch v. Klaus, 46 Conn. 433.

<sup>66</sup> Zeigler v. Beasley, 44 Ga. 56; Moeckly v. Gorton, 78 Ia. 202, 42 N. W. 648; Streissguth v. Kroll, 86 Minn. 325, 90 N. W. 577; King v. Baker, 1 Yerg. 450.

<sup>67</sup> Whitt v. Blount, 124 Ga. 671, 53 S. E. 205; Homer v. Johnston, 5 Miss. (6 How.) 698; Fellers v. Penrod, 57 Neb. 463, 77 N. W. 1085.

<sup>68</sup> Morton v. Stone, 67 N. H. 367, 29 Atl. 845.

<sup>69</sup> Russ Lumber Co. v. Muscupiabe L. & W. Co., 120 Cal. 521, 52



of consideration is, in most jurisdictions, deemed a valid defense in an action on a note or bill. But there is more difficulty as to a partial failure of consideration; in such a case the rule seems to be that unless the facts are such that the amount to be deducted because of the partial failure can be definitely computed, or unless the amount is liquidated or in the nature of a certain debt, such partial failure of consideration will constitute no defense.<sup>69</sup> There are many jurisdictions, however, where a partial failure of consideration is permitted as a valid defense, although the amount be unliquidated,<sup>70</sup> and in some jurisdictions such partial failure is declared a defense by statute.<sup>71</sup>

*"Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise."*<sup>72</sup>

So under the express terms of the above section of the statute failure of consideration is not a defense as against a *bona fide* holder for value but as against any person not a holder in due course the question of consideration is always open even though the instrument itself is *prima facie* evidence of the consideration.<sup>72a</sup>

**§ 69. Between whom question of consideration may be raised.** As a general rule the want or failure of consideration can only be raised as between the immediate parties.<sup>73</sup> This question may also be raised against any purchaser of the instrument who takes it with notice of such want or failure of the consideration,<sup>74</sup> unless he acquires title from a *bona fide* purchaser for value. In the case of the indorsement of an instrument the question of consideration for the indorsement may be raised as

Pac. 995, 65 Am. St. Rep. 186; *Journal Printing Co. v. Maxwell*, 1 Pennew. (Del.) 511, 43 Atl. 615; *Wadsworth v. Smith*, 10 Shep. (Me.) 500; *Brown v. Roberts*, 90 Minn. 314, 96 N. W. 793.

<sup>69</sup> *Pulsifer v. Hotchkiss*, 12 Conn. 234; *Allen v. Bank of U. S.*, 20 N. J. L. 620; *Lloyd v. Jewell*, 1 Me. 352, 10 Am. Dec. 73.

<sup>70</sup> *Wentworth v. Dows*, 117 Mass. 14.

<sup>71</sup> *Schuchman v. Knoebel*, 27 Ill. 175; *Webster v. Parker*, Ind. 185; *Martin v. Iron Works*, Fed. Cas. No. 9,157.

<sup>72</sup> Neg. Inst. Law, § 28, and cases there cited.

<sup>72a</sup> *Tatum v. Commercial Bank*, 185 Ala. 249; *Anthony v. Valentine*, 130 Mass. 119.

<sup>73</sup> *Wynne v. Whisenant*, 37 Ala. 46; *Risley v. Gray*, 98 Cal. 40, 32 Pac. 884; *Storm Lake etc. Bank v. Felt*, 100 Ia. 680, 69 N. W. 1057; *Fitch v. Redding*, 4 Sandf. (N. Y.) 130.

<sup>74</sup> *Russ Lumber etc. Co. v. Muscupiabe Land etc. Co.*, 120 Cal. 521, 52 Pac. 995, 65 Am. St. Rep. 186; *Skinner v. Raynor*, 95 Ia. 536, 64 N. W. 601; *Hale v. Aldaffer*, 5 Kan. App. 40, 5 Pac. 194.

between the indorser and indorsee.<sup>75</sup> In a bill of exchange the want or failure of consideration may be shown in an action brought by the payee against the drawer, by the indorsee against the payee, or by the drawer against the acceptor, but not in an action between the payee and acceptor.<sup>76</sup>

The Negotiable Instruments Law states:

*"Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time."*<sup>76a</sup>

§ 70. As to accommodation paper. The following provision is found in the Negotiable Instruments Law:

*"An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party."*<sup>77</sup>

The mercantile credit of parties is frequently loaned to others by the signature of their names as drawer, acceptor, maker, or indorser of a bill or note, to raise money upon, or to use otherwise for their benefit.<sup>78</sup> Such instruments are termed accommodation paper. An accommodation bill or note, then, is one to which the accommodation party has put his name, without consideration, for the purpose of accommodating some other party who is to use it, and is expected to pay it.<sup>79</sup> Between the accommodating and accommodated parties, the consideration may be shown to be wanting, but when the instrument has passed into the hands of a third party for value, and in the usual course of business, it cannot be. But if the holder has notice of defenses, the accommodation party may set up any defense which would avail the party accommodated, as to set off a debt due from the holder to the party accommodated. Until an accommodation bill has

<sup>75</sup> Shanklin v. Cooper, 8 Blkfd. (Ind.) 41; Larrabee v. Fairbanks, 24 Me. 363, 41 Am. Dec. 389; Martin v. Kercheval, 4 McLean (U. S.) 117, 16 Fed. Cas. No. 9,163.

<sup>76</sup> Hoffman v. Bank of Milwaukee, 12 Wall. 191; Hunt v. Johnston, 96 Ala. 130, 11 So. 387; Merrill v. Packer, 80 Ia. 543, 45 N. W. 1076.

<sup>76a</sup> Neg. Inst. Law, § 26 and cases there cited.

<sup>77</sup> Neg. Inst. Law, § 29, where all

cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>78</sup> Dunn v. Weston, 71 Me. 270 36 Am. Rep. 310; Lenheim v. Wilmarling, 55 Pa. St. 73. As to nature of contract on accommodation paper, see note 31 Am. St. Rep. 745.

<sup>79</sup> Jefferson Co. v. Burlington etc. Ry. Co., 66 Ia. 385, 16 N. W. 561; Gilman v. Henry, 53 Wis. 465, 10 N. W. 692; Vitkovitch v. Kleinecke, 33 Tex. Civ. App. 20, 75 S. W. 544.

been negotiated the accommodation party may rescind his obligation and demand the recall of the instrument or the cancellation of his signature. The consideration given by a holder for value of accommodation paper makes the paper enforceable against all parties to it, and in some jurisdictions this is true even where the paper has been negotiated after due.<sup>80</sup>

It is a well established rule that a promissory note given by the maker, in exchange for a promissory note given by the payee, is for a valuable consideration, and is in no sense an accommodation paper, although made for the mutual accommodation of the parties.<sup>81</sup> And this is so though the note given in exchange is worthless.<sup>82</sup> And it has been held that an indorsement of X's note by Y to Z is a good consideration for a note from Z to Y, and it is no defense to Z's note that he failed to recover against X on the note indorsed to him by Y.<sup>83</sup>

The words "without receiving value therefor" in the section of the statute above set out refer to the instrument itself, and not to the loan of the name by way of accommodation.<sup>83a</sup>

An accommodation indorser has the right to retract his indorsement at any time before the paper is negotiated for his indorsement and his continuing to be so are alike voluntary until rights arise by the negotiation to third parties.<sup>83b</sup>

<sup>80</sup> French v. Bank of Columbia, 4 Cranch 141; Stephens v. Monongahela Nat. Bank, 88 Pa. St. 157, 32 Am. Rep. 438; Pray v. Rhodes, 42 Minn. 93, 43 N. W. 838; Clark v. Thayer, 105 Mass. 216, 7 Am. Rep. 511.

<sup>81</sup> Backas v. Spalding, 116 Mass. 418; Farber v. Nat. Forge Co., 140 Ind. 54, 39 N. E. 249; Williams v. Banks, 11 Md. 198.

<sup>82</sup> Rice v. Grange, 131 N. Y. 149, 30 N. E. 46.

<sup>83</sup> Luke v. Fisher, 10 Cush. (Mass.) 271. As to power of corporation to issue accommodation paper, see nat in 9 L. R. A. (N. S.) 193.

<sup>83a</sup> Morris County Brick Co. v. Austin, 79 N. J. Law, 273.

<sup>83b</sup> Berkley v. Tinsley, 88 Vt. 1001.

## CHAPTER VIII.

### SUBDIVISION A—ACCEPTANCE OF BILLS.

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| <p>§ 71. Meaning of term.<br/>         72. Object of acceptance.<br/>         73. Form of acceptance.<br/>         74. Nature and effect of acceptance.<br/>         75. According to tenor of bill.<br/>         76. Delivery.<br/>         77. Acceptance of incomplete bill.<br/>         78. Varieties of acceptance—In general.<br/>         79. Varieties of acceptance—As to terms—General acceptance.<br/>         80. Varieties of acceptance—As to terms—Qualified acceptance.<br/>         81. Varieties of acceptance—As to form—In general.<br/>         82. Varieties of acceptance—As to form—Written.</p> | <p>§ 83. Varieties of acceptance—As to form—Parol.<br/>         84. Varieties of acceptance—As to mode of proof—Express.<br/>         85. Varieties of acceptance—As to mode of proof—Implied.<br/>         86. Acceptance of bills drawn in sets.<br/>         87. Revocation of acceptance.<br/>         88. What bills must be presented for acceptance.<br/>         89. By and to whom presentment should be made.<br/>         90. Time of presentment.<br/>         91. Place of presentment.<br/>         92. Presentment excused.<br/>         93. Acceptances for honor, or supra protest.</p> |
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§ 71. **Meaning of term.** The acceptance of a bill of exchange is the act by which the person on whom a bill of exchange is drawn (called the drawee) assents to the request of the drawer to pay it, or, in other words, engages, or makes himself liable, to pay it when due.<sup>1</sup>

As stated in the Negotiable Instruments Law:

*"The acceptance of a bill is the signification of the drawee of his assent to the order of the drawer."*<sup>2</sup>

The presumption is that every bill of exchange is drawn on account of some indebtedness from the drawee to the drawer, and that the acceptance is an appropriation of the funds of the latter in the hands of the former; and the rule of law is not unjust that prevents the acceptor from setting up a want of funds of

<sup>1</sup> Swope v. Ross, 40 Pa. St. 186, 80 Am. Dec. 567; Kimbark v. Car etc. Co., 103 Ill. App. 632; Wolcott v. Van Santvoord, 17 Johns. (N. Y.) 248, 8 Am. Dec. 396.

<sup>2</sup> Neg. Inst. Law, § 132, where all cases directly or indirectly bearing upon or citing the Law are grouped.

the drawer in his hands, since it was his duty before he accepted the bill to find out whether he owed the drawer that amount. The payee or other holder of the bill had no means of knowing how the fact was as it was in the knowledge of the drawee and the payee or holder proceeding on the bill had a right to assume that the drawee would not accept the bill unless he had sufficient funds of the drawer to make good the acceptance.<sup>2a</sup>

**§ 72. Object of acceptances.** Acceptance applies only to bills of exchange, foreign and inland, for the law of presentment for acceptance and of acceptance can have no application to a negotiable contract, where, from its nature, there is or can be no acceptor.

The Negotiable Instruments Law provides that:

*"A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same."*<sup>3</sup>

Thus the drawee of a bill is not bound as a party to the bill until he has accepted it,<sup>4</sup> or agreed previously to pay it,<sup>5</sup> and cannot be sued by the holder of the instrument, though he has funds in his hands sufficient to cover the bill,<sup>6</sup> except where the bill constitutes an equitable assignment of the funds drawn against.<sup>7</sup> So due presentment for acceptance by the holder is a condition precedent to the exercise of rights against the other parties to the instrument arising when the bill is dishonored by non-acceptance. The object of acceptance then is to bind the drawee and make him an actual and bound party to the instrument which he is not until he has accepted. For until there has been an acceptance the drawee is under no obligation whatever upon the bill itself. He may have in his possession funds belonging to the drawer, but that is a different obligation from that which appears upon the face of the instrument, and until he does accept either in writing or verbally, he is under no obliga-

<sup>2a</sup> *Jarvis v. Wilson*, 46 Conn. 90, *Boill v. Tuttle*, 81 N. Y. 454.

<sup>3</sup> *Neg. Inst. Law*, § 127, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>4</sup> *Pickle v. Muse*, 88 Tenn. 380, 12 S. W. 919, 17 Am. St. Rep. 900, 7 L. R. A. 93; *Poole v. Carhart*, 71 Ia. 37, 32 N. W. 16; *Imp. Co. v. Erwin*, 66 Kan. 261, 71 P. 521.

<sup>5</sup> *Coolidge v. Payson*, 2 Wheat.

(U. S.) 66; *Lindley v. Waterloo First Nat. Bank*, 76 Iowa 629, 41 N. W. 381, 14 Am. St. Rep. 254; *Dull v. Bricker*, 70 Pa. St. 253; *Neg. Inst. Law*, § 223 (135).

<sup>6</sup> *Rockville Nat. Bank v. Lafayette etc. Bank*, 69 Ind. 479, 35 Am. Rep. 236; *Schuchardt v. Hall*, 36 Md. 590, 11 Am. Rep. 514.

<sup>7</sup> *Brill v. Tuttle*, 81 N. Y. 454; *Torrance v. Bank of British North Am.*, L. R. 5 P. C. 246.

tion to the parties upon the bill of exchange. Thus, the purpose of acceptance is to create liability on the part of the drawee of the bill. By accepting he agrees to pay according to the terms of the bill, that is, his contract, after he writes his acceptance or verbally makes the acceptance, is on the bill itself.

Until the bill has been accepted the drawer is the primary debtor and after acceptance the drawee or acceptor is the principal debtor and the drawer becomes secondarily liable.<sup>7a</sup>

The presumption arising from acceptance that the acceptor holds funds of the drawer may be rebutted.<sup>7b</sup> A complaint which fails to allege a written acceptance of a bill of exchange does not state a cause of action against the drawee; <sup>7c</sup> but a plea that the drawee "agreed to pay the order" is sufficient.<sup>7d</sup>

**§ 73. Form of acceptance.** By the Negotiable Instruments Law the acceptance must be written, signed by the drawee and must contain an express or implied promise to pay in money. The provisions are as follows:

*"The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money."*<sup>8</sup>

*"The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored."*<sup>9</sup>

As the statute requires the acceptance to be in writing, the fact that it was so given must be pleaded.<sup>9a</sup>

<sup>7a</sup> Clayton Town Site Co. v. Clayton Drug Co., 20 N. M. 185, 147 Pac. 460.

<sup>7b</sup> Dickerson v. Turner, 15 Ind. 4.

<sup>7c</sup> Wadhams v. Portland Ry. Co., 37 Wash. 86, 79 Pac. 597.

Contra: Faircloth-Byrd Mercantile Co. v. Adkinson, 167 Ala. 344, 52 So. 419.

<sup>7d</sup> Boonsdall v. Waftemeyer, 142 Fed. Rep. 415, 73 C. C. A. 515.

<sup>8</sup> Neg. Inst. Law, § 132, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>9</sup> Neg. Inst. Law, § 133, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>9a</sup> Wadhams v. Portland Ry. Co., 37 Wash. 86, 79 Pac. 597.

Below is a form of acceptance written on an instrument:

Accepted December 1, 1922. Donald Morris.	Chicago, Ill., December 1, 1922.
	Thirty days after date
	Pay to the order of John Matlock
	One Hundred and Twenty
	Dollars
	Valued received, and charge the same to account of
	Donald Morris,
	Jamestown, N. Y.
	HENRY HAMILTON.

The usual mode of making an acceptance is by writing the word "accepted" and subscribing the drawee's name as above, but the drawee's signature alone is sufficient.

The acceptance may be made while the bill is still incomplete,<sup>10</sup> but is usually made a reasonable time after execution. The holder may require that the date of acceptance be written on the bill so it will appear from the face of the instrument when it is due.<sup>11</sup>

An acceptance, if in writing, is constituted by words showing an intention to accept and not putting a direct negative upon the order contained in the bill,<sup>12</sup> but the mere admission of the correctness of the amount is not an assent to the order.<sup>12a</sup> At common law but not under the Negotiable Instruments Law a verbal acceptance is allowed and such is constituted by any words which evidence such intention clearly and unequivocally, if they be addressed to the drawer or holder, and he waive his right to a written acceptance.<sup>13</sup> And at common law an acceptance may also be implied from conduct evidencing such intention.

<sup>10</sup> Neg. Inst. Law, § 138, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>11</sup> Neg. Inst. Law, § 133, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>12</sup> Cortelyou v. Maben, 32 Neb. 697, 36 N. W. 159, 3 Am. St. Rep. 284; Whilden v. Merchant etc.

Nat. Bank, 64 Ala. 1, 38 Am. Rep. 1; Block v. Wilkerson, 42 Ark. 253; Bank v. Bank (Kan.), 87 Pac. 746.

<sup>12a</sup> Plaza Farmers' Union v. Ry, an, 78 Wash. 124, 138 Pac. 651.

<sup>13</sup> In re Goddard, 66 Vt. 415, 29 Atl. 634; Walker v. Lide, 1 Rich. (S. C.) 249, 44 Am. Dec. 252; Ecker v. Snowden, 2 Miles (Pa.) 275. For a full discussion see: Allen v. Leavens, 26 Oreg. 164, 37

Acceptance by telegram has been held sufficient,<sup>14</sup> and such acceptance when the bill is properly identified seems entirely unobjectionable and accords with the best interests of the business world. Such acceptances have almost uniformly been held valid under the Negotiable Instruments Law;<sup>14a</sup> thus A wires B a telegram reading: "Will you wire me that you will honor draft for \$300?" and B telegraphed back: "I will." It was a sufficient acceptance under the statute.<sup>14b</sup> Under the statutes of some states, which make an unconditional promise to accept a bill before it is drawn equivalent to actual acceptance in favor of a party, who upon the faith thereof receives it for valuable consideration, it has been adjudged that a telegram written and sent by the promisor operates as an acceptance.<sup>15</sup>

Under the English Bills of Exchange Act the acceptance must be written on the bill itself which precludes the giving of an acceptance by telegraph, either by a bank or by any other drawee.<sup>15a</sup>

This section as to writing does not apply to a foreign bill payable in another state unless the law of that other state is proved since the common law rule will be presumed to apply that an acceptance may be oral.<sup>15b</sup>

**§ 74. Nature and effect of acceptance.** The drawer of a bill undertakes that when it is presented to the drawee the latter will accept it; and by acceptance is meant an undertaking on the drawee's part to pay the bill according to its tenor. Until the bill has been accepted, the drawer is the primary debtor. After acceptance, the drawer becomes secondarily liable, and his liability is the same as that of a first indorser upon a promissory note.

The effect of the acceptance of a bill is to constitute the acceptor the principal debtor.<sup>16</sup> The bill becomes by the acceptance

Pac. 488, 46 Am. St. Rep. 613, 26 L. R. A. 620. See also note 1 Am. St. Rep. 137.

<sup>14</sup> *Flora etc. Bank v. Clark*, 61 Md. 400, 48 Am. Rep. 114; *Garrettson v. North Atchinson Bank*, 39 Fed. 163, 7 L. R. A. 428. See also note 4 U. S. L. Ed. 185.

<sup>14a</sup> *In re Armstrong*, 41 Fed. 381; *Selma Savings Bank v. Webster County Bank*, 182 Ky. 604, 206 S. W. 870; *Iowa State Savings Bank v. City National Bank*, 183 Iowa 1347, 168 N. W. 148.

<sup>14b</sup> *Oil Well Supply Co. v. Mac-Murphy*, 119 Minn. 500.

<sup>15</sup> *Henrietta Nat. Bank v. State Nat. Bank*, 80 Tex. 648, 16 S. W. 321, 26 Am. St. Rep. 773. See also note 2 L. R. A. 709.

<sup>15a</sup> Appendix C. paragraph 17.

<sup>15b</sup> *Bank of Laddonia v. Bright-Coy Commission Co.*, 139 Mo. App. 110, 120 S. W. 648.

<sup>16</sup> *Jarvis v. Wilson*, 46 Conn. 90, 33 Am. Rep. 18; *Farmers etc. Bank v. Rathbone*, 26 Vt. 19, 58 Am. Dec. 200; *Ragsdale v. Gresham*,



very similar to a promissory note—the acceptor being the promisor, and the drawer standing in the relation of an indorser.<sup>17</sup>

The acceptance is a response to the direction contained in the bill; and the language of the bill and the acceptance are but parts of one entire contract in writing,<sup>17a</sup> but this contract is regarded as a new contract.<sup>17b</sup>

Upon paying the bill the acceptor can charge the amount of the same to the fund of the drawer in his hands, or if he has none, he can recover from the drawer by action.<sup>18</sup> If the drawee refuses to accept the instrument after he has promised to do so, the drawer may sue on the original amount due or on the breach of his promise to accept the bill.<sup>19</sup>

**§ 75. According to tenor of bill.** The acceptance must be according to the tenor of the bill to bind all the parties to it. The promise must be to pay all the money called for in the bill, at the time and place of payment.<sup>20</sup> If the acceptance were not according to the tenor of the bill there would be two or three causes of action divided among the parties. If an acceptor of a hundred-dollar bill of exchange accepts for \$50, that leaves \$50 which has not been accepted. There would be confusion when the obligation was paid; the party paying would be entitled to possession of the bill and that would raise the presumption that the whole bill was paid. So for these among other reasons, the acceptance must be according to the tenor of the bill. When the modification of the tenor of the bill is such that it either casts no hardship upon the indorser or where the indorser or parties prior to the acceptor know of the modification and assent to it, there the reason for rejecting it as a form of acceptance ceases to exist, and so the rule is that a modified or qualified acceptance is immaterial, or if known and assented to is a good acceptance.

The Negotiable Instruments Law provides as follows as to a qualified acceptance:

*"The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the*

141 Ala. 308, 37 So. 367. As to accommodation acceptor see: White v. Hopkins, 3 Watts & S. (Pa.) 99, 37 Am. Dec. 542. See Van Alstyne v. Sorley, 32 Tex. 518. See note 1 Am. St. Rep. 134.

<sup>17</sup> Raborg et al. v. Peyton, 2 Wheat (15 U. S.) 385.

<sup>17a</sup> Meyer v. Beardsley, 29 N. J. L. 236.

<sup>17b</sup> Superior City v. Ripley, 138 U. S. 93.

<sup>18</sup> Christian v. Keen, 80 Va. 377; Martin v. Muncy, 40 La. Ann. 190.

<sup>19</sup> Cooper v. Jones, 79 Ga. 379, 4 S. E. 916; Coursin v. Ledlie, 3 Pa. St. 506; Quin v. Hanley, 5 Ill. App. 51.

<sup>20</sup> See, however, § 79 on qualified acceptance.

bill as dishonored by non-acceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto."<sup>21</sup>

If the holder receives such an acceptance he can claim payment only according to the condition or qualification.<sup>21a</sup> An agent for collection as a bank has no authority to receive anything short of an explicit and unqualified acceptance.<sup>21b</sup>

**§ 76. Delivery.** The Negotiable Instruments Law provides: "Acceptance means an acceptance completed by delivery or notification."<sup>22</sup>

The acceptance is incomplete until delivery or notification.<sup>22a</sup>

**§ 77. Acceptance of incomplete bill.** While still incomplete a bill may be accepted. The Negotiable Instruments Law provides:

"A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the presentment."<sup>23</sup>

The right of the holder to recover from the acceptor is not affected by the fact that he discounted the instrument before acceptance.<sup>23a</sup> A bill does not necessarily lose its negotiable character by being dishonored.<sup>23b</sup>

**§ 78. Varieties of acceptance—In general.** There are several varieties of acceptance. For convenience they may be clas-

<sup>21</sup> Neg. Inst. Law, § 142, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>21a</sup> Cline v. Miller, 8 Md. 274.

<sup>21b</sup> Walker v. New York State Bank, 9 N. Y. 582.

<sup>22</sup> Neg. Inst. Law, § 191, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>22a</sup> First Nat. Bank of Murfreesboro v. First National Bank of

Nashville, — Tenn. —, 154 S. W. 965.

<sup>23</sup> Neg. Inst. Law, § 138, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>23a</sup> Bank of Louisville v. Ellery, 34 Barb. 630.

<sup>23b</sup> Leavitt v. Putnam, 3 N. Y. 494.

As to acceptance when bill is incomplete see: Bank v. Neal, 22 How (63 U. S.) 107; Hopps v. Savage, 69 Md. 513.

sified as to their terms, as to their form, and as to the mode of proof. As to their terms acceptances are either general or qualified; as to their form, they are either written or by parol; as to their mode of proof, they are either express or implied.

**§ 79. Varieties of acceptances—As to terms—General acceptance.** *"An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn."*<sup>24</sup>

*"An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere."*<sup>25</sup>

The above sections of the Negotiable Instrument Law, as a general rule, have been the law in this country without statutory enactment.

A bill addressed generally to a drawee in a city may be accepted payable at a particular bank in that city,<sup>25a</sup> but where a bill is addressed to the drawee in one place. and is accepted payable in another, it is a material variation.<sup>25b</sup>

**§ 80. Varieties of acceptances—As to terms—Qualified acceptance.** The Negotiable Instruments Law provides:

*"An acceptance is qualified which is (1) conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated; (2) partial, that is to say, acceptance to pay part only of the amount for which the bill is drawn; (3) local, that is to say, an acceptance to pay only at a particular place; (4) qualified as to time; (5) the acceptance of some one or more of drawees, but not of all."*<sup>26</sup>

The above is a clear statement of the law generally.

Such acceptances do not become due until the happening of the contingency upon which the bill is accepted.<sup>26a</sup>

**§ 81. Varieties of acceptance—As to form—In general.** As to their form acceptances in the absence of statute are written or parol.

<sup>24</sup> Neg. Inst. Law, § 139, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>25</sup> Neg. Inst. Law, § 140, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>25a</sup> Troy City Bank v. Lanwan, 19 N. Y. 477; Meyers v. Standart, 11 Ohio St. 29.

<sup>25b</sup> Niagara District Bank v. Fairman etc Mfg. Co., 31 Barb. 403.

<sup>26</sup> Neg. Inst. Law, § 141, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>26a</sup> Marshall v. Burnby, 25 Fla. 619.

A written acceptance: (1) may be written on the instrument; or (2) it may be written on a separate paper; and if on a separate paper, (a) it may be an acceptance as to an existing bill; or it may be (b) an acceptance as to a non-existing bill.

§ 82. **Varieties of acceptance—As to form—Written.** Take a bill of exchange; the drawee writes across the face of the bill "accepted" and signs his name on the bill itself.<sup>27</sup> That is the first form. Now, take the second form of written acceptances: A writes B that he has drawn on him for \$500 and wants to know whether he will accept that, and B writes to A, or to the payee C, "yes, I will accept that bill." That is an acceptance of an existing bill.<sup>28</sup> Now, suppose A writes to B and says: "I (in the future) am going to draw on you and want to know if you are going to accept it," and B writes A and says he will accept it. That is the acceptance of a non-existing bill.<sup>29</sup> As to the existing bill the Negotiable Instruments Law provides:

*"Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor, except in favor of a person to whom it was shown and who, on the faith thereof, receives the bill for value."*<sup>30</sup>

For example, a certain instrument has been drawn and A holds the instrument; it has been drawn upon B, and A writes to B a letter and says a certain instrument has been drawn upon him and describes it in definite terms or reasonably so, and then B writes back and states in his letter that he accepts that bill which has been drawn upon him and that he will pay it; then A holds this instrument, he also holds the letter, he shows them to X and X says: "I will take that instrument upon the promise of B that he will accept it. I see that he has written that he would and he has clearly described the bill of exchange, and I will receive it." Such an acceptance is valid and conforms with the requirements.

Thus the acceptance may be on a separate paper, but the promise must be clear and unequivocal. And since the acceptance

<sup>27</sup> Spear v. Pratt, 2 Hill (N. Y.) 582, 38 Am. Dec. 600. Not absolutely necessary to use the word accepted, Whilden v. Merchants etc. Nat. Bank, 64 Ala. 1, 38 Am. Rep. 1. When insufficient, Cook v. Baldwin, 120 Mass. 317, 21 Am. Rep. 517.

<sup>28</sup> Cook v. Miltenberger, 23 La. Ann. 377; Bank of Commerce v. J. G. Shaw Band, 54 N. Y. Sup.

Ct. 83; Coolidge v. Payson, 2 Wheat. 66.

<sup>29</sup> Evansville Nat. Bank v. Kaufmann, 24 Hun (N. Y.) 612; Barnsdall v. Waltemeyer, 142 Fed. 415, 73 C. C. A. 515.

<sup>30</sup> Neg. Inst. Law, § 134, where all cases directly or indirectly bearing upon or citing the Law are grouped

need not be on the instrument itself, a letter accompanying the bill may be used to qualify or limit an acceptance indorsed on the bill,<sup>30a</sup> but not against a *bona fide* holder; and a written agreement modifying the terms of an accepted bill and securely pasted thereto, is a part thereof and cannot be lawfully severed therefrom without the drawer's consent.<sup>30b</sup>

A telegram agreeing to accept an instrument for a certain sum "for stock" is valid as an acceptance and is not a conditional contract,<sup>30c</sup> for at most the words "for stock" are but an indication of the nature of the consideration between the drawer and acceptor.<sup>30d</sup>

As to the non-existing bill the Negotiable Instruments Law provides: "*An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.*"<sup>31</sup>

If the bill is not in existence, for the convenience of business, the acceptance may be on a separate paper.

The requirements are:

(1) That the contemplated drawee shall describe the bill to be drawn, and promise to accept it.<sup>32</sup>

(2) That the bill shall be drawn in a reasonable time after such promise is written;<sup>33</sup> and

(3) That the holder shall take the bill upon the credit of the promise.<sup>34</sup>

Thus A says to B: "I am going to draw upon you for \$500 and I want to know if you will accept the instrument, if I draw upon you," and B writes back a letter and says: "I will accept that instrument for \$500;" and describes the instrument so it

<sup>30a</sup> Lehnhard v. Sidway, 160 Mo. App. 83.

<sup>30b</sup> Wait v. Pomeroy, 20 Mich. 425; Gerrish v. Glines, 56 N. H. 9.

<sup>30c</sup> Coffman v. Campbell, 87 Ill. 98.

<sup>30d</sup> State Bank v. Bradstreet, 89 Neb. 188.

<sup>31</sup> Neg. Inst. Law, §135, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>32</sup> Von Phul v. Sloan, 2 Rob. (La.) 148, 38 Am. Dec. 207; Fowler v. McPhee, 13 Colo. App. 185, 56 Pac. 118; Am. Waterworks Co. v. Venner, 18 N. Y. S. 379, 45 N. Y. St. 441; Brinkman v. Hunter, 73 Mo. 172, 39 Am. Rep. 492;

Burke v. Utah Nat. Bank, 47 Neb. 247, 66 N. W. 295.

<sup>33</sup> Flora First Nat. Bank v. Clark, 61 Md. 400, 48 Am. Rep. 114; Wilson v. Clements, 3 Mass. 1; Union Bank v. Shea, 57 Minn. 180, 58 N. W. 985.

What is reasonable. Nimochs v. Woody, 97 N. C. 1, 2 S. E. 249, 2 Am. St. Rep. 268.

<sup>34</sup> Kennedy v. Geddes, 8 Port. (Ala.) 263, 33 Am. Dec. 289; Sternan v. Harrison, 42 Pa. St. 49, 82 Am. Dec. 491; Hall v. Emporia Nat. Bank, 133 Ill. 234, 24 N. E. 546; Nelson v. Chicago First Nat. Bank, 48 Ill. 39, 95 Am. Dec. 510. See Storer v. Logan, 9 Mass. 55.

can be understood. A shows this letter to Y and Y says: "Yes, I see you have drawn that instrument as you said you would and I will take the instrument, relying upon B's written promise." Such an acceptance is valid and conforms with the requirements.

The last principles also apply to acceptances on a separate paper whether the bill is or is not in existence. That is, (1) credit must be given to the promise;<sup>34a</sup> (2) the bill must be described and the terms must be definite, or reasonably so;<sup>34b</sup> and (3) the bill must have been discounted upon the promise. But the promise is exempted if not made with the knowledge of some holder of the bill.<sup>35</sup> An acceptance on a separate piece of paper is a valid acceptance mainly because it assists in the negotiation of bills.

Telegraphic authority to draw is an unconditional power in writing under the statute.<sup>35a</sup>

As the Negotiable Instruments Law requires all acceptances to be in writing, a bank cannot be held upon the oral promise of one of its officers to pay a check.<sup>35b</sup>

A written agreement modifying the terms of an accepted bill and securely attached thereto is a part thereof and cannot be lawfully detached therefrom without the drawer's consent.<sup>35c</sup>

**§ 83. Varieties of acceptances—As to form—Parol.** A parol acceptance is not recognized by the Negotiable Instruments Law.<sup>36</sup>

In the absence of a statutory intervention, it is the common law rule that an unequivocal parol promise to accept a specific existing bill is binding.<sup>37</sup> But such a promise to accept a future bill, even though the bill be taken by the holder upon the faith and credit of such promise, is not binding as an acceptance. Thus where A calls up B over the telephone and says: "B, I am going

<sup>34a</sup> *Bank v. Hay*, 143 N. C. 332; *First National Bank v. Muskogee*, 40 Okla. 603.

<sup>34b</sup> *Bank of Flora v. Clark*, 61 Md. 405.

<sup>35</sup> *Pollock v. Helm*, 54 Miss. 1, 28 Am. Rep. 342; *Nimochs v. Woody*, 97 N. C. 1, 2 S. E. 249, 2 Am. St. Rep. 268; *Coolidge v. Payson*, 2 Wheat. (U. S.) 66.

<sup>35a</sup> *Wells v. Western Union Telegraph Co.*, 144 Iowa 605, 123 N. W. 371, 24 L. R. A. 1045.

<sup>35b</sup> *Ewing v. Citizens' Nat. Bank*, 162 Ky. 551, 172 S. W. 955; *Van Buskirk v. State Bank of Rocky*

*Ford*, 35 Colo. 142, 83 Pac. 778, 117 Am. St. Rep. 182.

<sup>35c</sup> *Bothell v. Schweister*, 84 Neb. 271.

<sup>36</sup> *Neg. Inst. Law*, § 132, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>37</sup> *Whilden v. Merchants, etc., Bank*, 64 Ala. 1, 38 Am. Rep. 1; *Joyce v. Wing Yet Lung*, 87 Cal. 424, 25 Pac. 545; *Ecker v. Snowden*, 2 Miles (Pa.) 275; *In re Goddard*, 66 Vt. 415, 29 Atl. 634. As to parol acceptances, see note 26 L. R. A. 620.

to draw a certain bill of exchange upon you and I want to know if you will accept it," and B says, "Yes, I will accept it," and A draws the bill and takes it to Z and tells him what was said by B, and Z takes it, and Z doesn't wish to rely on the credit of A because A has no credit, but takes it because of B's credit; the law generally is that such a promise is not a good acceptance of a bill not in existence, if made by parol.<sup>38</sup>

**§ 84. Varieties of acceptances—As to mode of proof—Express.** An express acceptance is an acceptance written upon the face of the instrument.<sup>39</sup>

**§ 85. Varieties of acceptances—As to mode of proof—Implied.** An implied acceptance is any act which clearly indicates an intention to comply with the request of the drawer, or any conduct of the drawee from which the holder is justified in drawing the conclusion that the drawee intended to accept the bill, and intended to be so understood.<sup>40</sup>

The Negotiable Instruments Law provides:

*"Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such period as the holder may allow,\*to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same."*<sup>41</sup>

In some jurisdictions, as in Illinois and South Dakota, the above section is omitted; in others as in Wisconsin it is provided that mere retention of the bill is not acceptance; while in some jurisdictions as in Pennsylvania, a proviso as to demanding the return of the bill has been added.<sup>41a</sup>

The word "refuses" as used in the statute above, does not mean a tortious refusal, nor does it imply that a previous demand for the return of the instrument to the holder should be

<sup>38</sup> Wakefield v. Greenhood, 29 Cal. 597; Mercantile Bank v. Cox, 38 Me. 500; Nichols v. Commercial Bank, 55 Mo. App. 81.

*Contra*, Nelson v. Chi. First Nat. Bank, 48 Ill. 36, 95 Am. Dec. 510; Woodward v. Griffins-Marshall Grain Co., 43 Minn. 260, 45 N. W. 433.

<sup>39</sup> Spear v. Pratt, 2 Hill (N. Y.) 582, 38 Am. Dec. 600; Cortelyou v. Maben, 32 Neb. 697, 36 N. W. 159, 3 Am. St. Rep. 284.

<sup>40</sup> Westburg v. Chicago L. & C. Co., 117 Wis. 589; Overman v. Hoboken City Bank, 31 N. J. L. 563;

State v. Weiss, 91 N. Y. S. 276; Hough v. Loring, 24 Pick. (Mass.) 254; Pickle v. Muse, 88 Tenn. 380, 12 S. W. 919, 17 Am. St. Rep. 900, 7 L. R. A. 93; Dickinson v. Marsh, 57 Mo. App. 566; Hall v. Emporia First Nat. Bank, 133 Ill. 234, 24 N. E. 546.

<sup>41</sup> Neg. Inst. Law, § 137, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>41a</sup> See Neg. Inst. Law, § 137, for changes made in different jurisdictions.

made, but is to be construed to cover a failure or neglect to return the check.<sup>41b</sup>

**§ 86. Acceptance of bills drawn in sets.** The law as to the acceptance of bills drawn in sets is stated in the Negotiable Instruments Law as follows:

*"The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill."*<sup>42</sup>

**§ 87. Revocation of acceptance.** The acceptor or drawee who has not communicated his acceptance or the accepted bill to the holder, may revoke an acceptance before delivery and cancel the written acceptance.<sup>43</sup>

**§ 88. What bills must be presented for acceptance.** The Negotiable Instruments Law provides:

*"Presentment for acceptance must be made:*

1. *Where the bill is payable after sight or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument.*

2. *Where the bill expressly stipulates that it shall be presented for acceptance; or*

3. *Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.*

*In no other case is presentment for acceptance necessary in order to render any party to the bill liable."*<sup>44</sup>

Bills payable on demand or at sight without grace, or payable at a certain number of days after date, or after any other certain event, or payable on a certain day, need not be presented for acceptance at all, but only for payment.<sup>45</sup> But it is usual and best,

<sup>41b</sup> State Bank v. Miss., 91 N. Y. 276; Westburg v. Chicago Lumber Co., 117 Wis. 589, 94 N. W. 572.

<sup>42</sup> Neg. Inst. Law, § 181, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>43</sup> Robbins v. Lambeth, 2 Rob. (La.) 304; Irving Bank v. Wetherald, 36 N. Y. 335; German Nat. Bank v. Farmers Dep. Nat. Bank, 118 Pa. St. 294, 12 Atl. 303; Guthrie Nat. Bank v. Gill, 6 Okla. 560, 54 Pac. 434.

<sup>44</sup> Neg. Inst. Law, § 143, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>45</sup> Commercial Bank v. Perry, 10 Rob. (La.) 61, 43 Am. Dec. 168; Carmichael v. Pennsylvania Bank, 4 How. (Miss.) 567, 35 Am. Dec. 408; House v. Adams, 48 Pa. St. 261, 86 Am. Dec. 588; Champion v. Gordon, 70 Pa. St. 474, 10 Am. Rep. 581.



when the bill is payable at a future day, to present it for acceptance, in order to ascertain whether it will certainly be honored, and to procure the assurance of liability of the acceptor.<sup>46a</sup>

Bills payable at sight or at so many days after sight, or after demand, or after any other event not absolutely fixed must be presented to the drawee for acceptance and payment, or for acceptance only, without unreasonable delay, or the drawers and indorsers will be discharged, for they have an interest in having the bills accepted immediately in order to shorten the time of payment, and thus put a limit to the period of their liability and also to enable them to protect themselves by other means before it is too late, if the bill is not accepted and paid within the time originally contemplated by them.<sup>46</sup>

**§ 89. By and to whom presentment should be made.** Any person in possession of a bill of exchange may present it for acceptance, or may do so through his properly authorized agent.<sup>47</sup> The presentment must be made to the drawee personally or to some person who has authority to accept or refuse to accept for him.<sup>48</sup>

The Negotiable Instruments Law provides:

*"Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only."*<sup>49</sup>

*"Where the drawee is dead, presentment may be made to his personal representative."*<sup>50</sup>

*"Where the drawee has been adjudged a bankrupt or an insolvent; or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee."*<sup>51</sup>

If one of the drawers accepts he will of course be bound by his acceptance.

<sup>46a</sup> National Park Bank v. Saitta, 127 App. Div. (N. Y.) 624.

<sup>46</sup> Neg. Inst. Law, § 144, where all cases directly or indirectly bearing upon or citing the Law are grouped; Nimocks v. Woody, 97 N. C. 1, 2 S. E. 249, 2 Am. St. Rep. 268; Nutting v. Burked, 48 Mich. 241; Thornburg v. Emmons, 23 W. Va. 333.

<sup>47</sup> Stainback v. Bank, 11 Gratt. 269; Walker v. State Bank, 9 N. Y. 582.

<sup>48</sup> Schuchardt v. Hall, 36 Md. 590, 11 Am. Rep. 514; Stainback v. State Bank, 11 Gratt. (Va.) 269; Nelson v. Fottrell, 7 Leigh (Va.) 179.

<sup>49</sup> Neg. Inst. Law, § 145, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>50</sup> See preceding note.

<sup>51</sup> See preceding note.

Where the drawee is dead presentment is not necessary and the above section of the law merely states some one to whom presentation can be made.

**§ 90. Time of presentment.** The Negotiable Instruments Law provides:

*"Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf."*<sup>52</sup>

The time within which the holder must present a bill for acceptance which requires such presentment, is usually stated to be a reasonable time, and this is a mixed question of law and fact depending upon the circumstances.

The Negotiable Instruments Law provides:

*"Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged."*<sup>52a</sup>

This has always been the law in general.

A delay of the mail is a sufficient excuse for the omission to immediately present a bill for acceptance, and a presentation immediately after its reception is in time to charge the indorser.<sup>52b</sup>

Presentment should be made during usual and reasonable hours. What constitutes reasonable hours of business depends upon the custom of the particular place and also upon the trade or business. Any hour before the customary hour of retiring will be sufficient when presented at drawee's residence.<sup>53</sup>

As to the days on which presentment may be made the Negotiable Instruments Law provides as follows:

*"A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this act. When Saturday is not otherwise a holiday, presentation for acceptance may be made before twelve o'clock noon on that day."*<sup>53a</sup>

<sup>52</sup> Neg. Inst. Law, § 145, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>52a</sup> Neg. Inst. Law, 144.

<sup>52b</sup> Walsh v. Blatchly, 6 Mo. 422.

<sup>53</sup> Bolton v. Harrod, 9 Mart. (La.) 326, 13 Am. Dec. 306; Robinson v. Ames, 20 Johns. (N. Y.)

146, 11 Am. Dec. 259; Phoenix Ins. Co. v. Allen, 11 Mich. 501.

Rule does not apply to non-negotiable paper. Briggs v. Persons, 31 Mich. 400.

<sup>53a</sup> Neg. Inst. Law, § 146, where all cases directly or indirectly bearing upon or citing the Law are grouped.

Several jurisdictions as Arizona, Kentucky and Wisconsin omit the last sentence of the above section.

The Negotiable Instruments Law further provides:

*"The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation."*<sup>54</sup>

There may be an acceptance after there has been a refusal to accept or after protest or after dishonor.<sup>55</sup> So when we say it must be in a reasonable time, that means when the instrument is first presented for acceptance. It does not mean that after twenty-four hours the bill can never be accepted. When the bill is presented, it is reasonable that the drawee should be allowed some time to deliberate whether he will accept or not; and by the rule of the law merchant he was entitled to demand twenty-four hours for this purpose, and the holder was justified in leaving the bill with him for that time.

The time allowed is twenty-four hours after delivery and not after demand for a return of the bill and the time for returning the bill to the holder does not begin to run from the demand for its return, but the date of its delivery.<sup>56a</sup>

**§ 91. Place of presentment.** The presentment for acceptance, if the bill is addressed to the drawee at a particular place, should be made at that place.<sup>56</sup> If the bill is not addressed to any particular place, presentment should be made either to the drawee personally, or at his dwelling or place of business<sup>57</sup> at the time of presentment.

**§ 92. Presentment excused.** *"Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance in either of the following cases: (1) Where the drawee is dead or has absconded, or is a fictitious person or a person not having capacity to contract by bill. (2) Where, after the exercise of reasonable diligence, presentment cannot be made. (3) Where, although presentment has been irregular, acceptance has been refused on some other ground."*<sup>58</sup>

<sup>54</sup> Neg. Inst. Law, § 136, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>55</sup> Wynne v. Raikes, 5 East. 514; Thompson on Bills, 214.

<sup>56a</sup> 3 R. C. L. 1309; Wisner v. Bank of Gallitzin, 220 Pa. St. 21.

<sup>56</sup> Wolfe v. Jewett, 10 La. 383; Ratcliff v. Planters Bank, 2 Sneed

(Tenn.) 425; Reynolds v. Chittle, 2 Campb. 596.

<sup>57</sup> Boot v. Franklin, 3 John. (N. Y.) 207; Mason v. Franklin, 3 Johns. (N. Y.) 202; Anderson v. Drake, 14 Johns. (N. Y.) 113.

<sup>58</sup> Neg. Inst. Law, § 148, where all cases directly or indirectly bearing upon or citing the Law are grouped.

*Ch. Vernier*

Presentment for acceptance is excused and the bill should be protested as dishonored by non-acceptance: when the drawee is discovered to be a fictitious person, or is incapable of making a valid contract from legal disabilities, or where, after reasonable diligence to ascertain the drawee, the presentment cannot be effected, or under any other like circumstances.

§ 93. Acceptances for honor, or supra protest. The Negotiable Instruments Law provides:

*"Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party."*<sup>60</sup>

*"An acceptance for honor, supra protest, must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor."*<sup>61</sup>

*"Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer."*<sup>61</sup>

*"The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted."*<sup>62</sup>

This is a peculiar kind of acceptance. It most frequently happens when the original drawee refuses to accept the bill, in which case a stranger may accept the bill for the honor of some one of the parties thereto, which acceptance will inure to the benefit of all the parties subsequent to him for whose honor it was accepted. It is essential that the acceptor for honor appear before a notary public and declare that he accepts the protested bill in honor of the drawer or indorser, as the case may be, and that he will pay it at the appointed time.

<sup>60</sup> Neg. Inst. Law, § 161, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>61</sup> Neg. Inst. Law, § 162, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>61</sup> Neg. Inst. Law, § 163, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>62</sup> Neg. Inst. Law, § 164, where all cases directly or indirectly bearing upon or citing the Law are grouped.

An acceptance for honor, then, is properly made by the acceptor appearing before a notary public and declaring his intention to accept for the honor of some one or more of the parties and subscribing to some such expression of his intention as "accepted for the honor of A."<sup>63</sup>

This is done to save the credit of the parties to the instrument, or some party to it, as the drawer, drawee, or indorser, or somebody else. Some one desires to save the credit of some one on the bill, and he does so by writing "accepted" on the bill. The court holds that the consideration is presumed, and the presumption is that he does have funds or money.

The acceptor for honor has recourse against the party for whose honor the acceptance was made and all parties against whom the latter would have recourse, for all damages incurred by reason of his acceptance.<sup>63a</sup>

But the acceptor for honor of the drawer cannot maintain an action thereon against the drawer without proof of its presentment to the drawee and non-acceptance or non-payment by him, and notice thereof to the drawer.<sup>63b</sup>

*"The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him."*<sup>64</sup>

The undertaking of the acceptor for honor is not an absolute engagement to pay at all events, but only a collateral and conditional engagement to pay, if the drawee does not.<sup>65</sup> The result of this rule is to require that the bill be presented to the drawee named therein at its maturity for payment and if payment is refused that it be protested and notice of dishonor given to him.<sup>66</sup> And the rule has been stated that the acceptor of a bill for the honor of the drawer cannot maintain an action thereon against him, without proof of its presentment to the drawee and non-acceptance or non-payment by him, and notice thereof to the drawer.<sup>67</sup>

<sup>63</sup> Gazzam v. Armstrong, 3 Dana (Ky.) 554. See note 7 U. S. L. Ed. 132.

<sup>63a</sup> Swope v. Rose, 40 Pa. St. 186, 80 Am. Dec. 567.

<sup>63b</sup> Baring v. Clark, 19 Pick 220.

<sup>64</sup> Neg. Inst. Law, § 165, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>65</sup> Schofield v. Bayard, 3 Wend. (N. Y.) 488; Mitchell v. Baring, 18 M. & M. 381.

<sup>66</sup> Walton v. Williams, 4 Ala. 347; Baring v. Clark, 19 Pick. (Mas.) 220.

<sup>67</sup> Wood v. Pugh, 7 Ohio, (Pt. 2) 156.

The following miscellaneous provisions relating to acceptances for honor are found in the Negotiable Instruments Law:

*"Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor."*<sup>68</sup>

*"When a dishonored bill has been accepted for honor, supra protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or reference in case of need."*<sup>69</sup>

*"Presentment for payment to the acceptor for honor must be made as follows: (1) If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity; (2) If it is presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and four."*<sup>70</sup>

*"The provisions of section eighty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need."*<sup>71</sup>

*"When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him."*<sup>72</sup>

<sup>68</sup> Neg. Inst. Law, § 166.

<sup>69</sup> Neg. Inst. Law, § 167.

<sup>70</sup> Neg. Inst. Law, § 168.

<sup>71</sup> Neg. Inst. Law, § 169.

<sup>72</sup> Neg. Inst. Law, § 170.

## SUBDIVISION B—TRADE ACCEPTANCES.

- |  |  |
|--|--|
| § 93a. Meaning of term.  | § 93e. Where payable.                        |
| 93b. Trade acceptances distinguished from ordinary bill of exchange. | 93f. By whom presented for discount.         |
| 93c. Trade acceptances distinguished from promissory note.           | 93g. Inducements by Federal Reserve System.  |
| 93d. Nature of transaction in which trade acceptances used.          | 93h. Effect on other negotiable instruments. |
|  | 93i. Origin.                                 |
|  | 93j. Extent of use.                          |
|  | 93k. Decisions.                              |

**§ 93a. Meaning of term.** A trade acceptance is a bill of exchange with a certain maturity drawn by a seller on a buyer for a fixed sum of money, representing the purchase price of goods payable to order, and bearing across its face the acceptance of the buyer.

In terms of business, it may be defined as a negotiable certificate of indebtedness, arising out of a current transaction in merchandise.

**§ 93b. Trade acceptances distinguished from ordinary bill of exchange.** The trade acceptance states upon its face that the obligation of the acceptor arises out of purchase of goods from the drawer, while the ordinary bill of exchange does not state upon its face the transaction out of which the giving of the instrument arose. The trade acceptance is confined to credit obligations arising from the sale of goods and must have a definite maturity, while the ordinary bill of exchange may cover various kinds of transactions and may be payable on demand, at sight, or at the end of a stated time.

It has been held that there is nothing in the Federal Reserve Act, Sec. 13, or in the regulations made thereunder by the Federal Reserve Board, changing the character of trade acceptances as bills of exchange, and they are within the rules, that a draft may be signed by the acceptor before the name of the drawer is filled in, that a drawer may be any one whom the acceptor may accept as such, and that a negotiable instrument may be drawn payable to the order of a payee who is not a maker, drawer or drawee.<sup>1</sup>

<sup>1</sup> Stafford v. Hill, — Calif. App. —, 200 Pac. 33.

**§ 93c. Trade acceptances distinguished from promissory note.** In addition to the usual differences between a bill of exchange and a promissory note, a trade acceptance is limited to obligations arising from the sale of goods, while the promissory note may cover not only obligations arising from the sale of goods, but also may cover practically any kind of obligation. In other words, the promissory note deals with all kinds of business transactions, while the trade acceptance deals with current merchandise transactions alone. The trade acceptance, unlike the promissory note, is not to be given for borrowed money or past-due obligations.

**§ 93d. Nature of transaction in which trade acceptance used.** The business practice involved in a transaction in which the trade acceptance is used is that one buys a bill of goods from a wholesaler or jobber and, later, instead of putting the account on his books or taking the buyer's promissory note, executes a time draft or bill of exchange on the buyer, who writes across the face of the instrument, "Accepted," and affixes his name. Thus a definite bargain is consummated between the seller and buyer of goods, and an amount due with a definite term agreed upon; the seller draws the trade acceptance and presents it to the buyer; if the buyer is willing to assume that title to goods has passed to him, that the trade acceptance is in proper form, and that the conditions of sale have been complied with, he accepts by writing across the face of the instrument the word, "Accepted," the date and place of payment, and his name, and then returns it to the seller or to the bank presenting it; the seller either holds the instrument until maturity or arranges to have it negotiated, and, in negotiating it, any of the following may be brought into the transaction: that is, the acceptor, the bank, the note broker, and the Federal Reserve Bank; for the instrument after acceptance becomes a piece of negotiable two-name paper which the seller may retain until maturity if he so desires, or may take to his bank for discount. The acceptor either pays it at maturity or secures an extension of time by treating it as a past-due obligation and covering it by a promissory note.

**§ 93e. Where payable.** Ordinarily the trade acceptance is paid, preferably at the buyer's bank, and if not there, usually at some other place mutually agreed upon at the time of its issue.

**§ 93f. By whom presented for discount.** The trade acceptance is ordinarily presented for discount by the seller of the merchandise.



§ 93g. **Inducements by federal reserve system.** For the trade acceptance to be eligible for purchase by Federal Reserve Banks, the trade acceptance must have a maturity at the time of purchase of not more than ninety days, exclusive of the days of grace, and it must be indorsed by a member bank or supported by a statement of the financial condition of one or more of the parties thereto. It must, of course, also bear the clause prescribed by the Federal Reserve Board, "The obligation of the acceptor hereof arises out of the purchase of goods from the drawer." Then the trade acceptance is entitled to extensive rediscount facilities with preferential rates and practical freedom from the ten per cent of capital and the surplus limits which measure the capacity of banks to loan to one person or concern upon single-name paper.

§ 93h. **Effect on other negotiable instruments.** The trade acceptance does not affect other negotiable instruments as the promissory note, since it is not given for borrowed money or past-due obligations.

It may be legally treated as a check chargeable against a buyer's balance at his bank without further instructions or authority. The Negotiable Instruments Law provides that: "*Where the instrument is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the person debtor thereon.*"<sup>2</sup>

§ 93i. **Origin.** The trade acceptance has been used in Europe for two centuries and was employed in America before the Civil War. It has been brought to life again in this country by the Federal Reserve Board, and a joint committee of the American Bankers Association, the United States Chamber of Commerce, and the National Association of Credit Men who are consistently promoting the use of the trade acceptance in the settlement of the obligations arising out of commercial transactions. It is urged that a wide use of trade acceptance would release for productive business hundreds of millions of dollars now tied up in "accounts receivable," and will supplant the "open book account" and the promissory note plan of commercial credit. It makes capital more fluid by releasing funds now tied up in open book accounts and by substituting readily negotiable paper for non-negotiable book accounts; it enables the buyer to realize that credit is as tangible as cash and should be guarded and used accordingly, and further helps him by making him deal always in current transactions rather than in long-drawn-out book ac-

counts and prevents the accumulation of the over-due accounts; it relieves the seller from the burden of financing his customers and the consequent burdening of his own capital, and puts the burden of proving correctness of the details of merchandise transactions upon the buyer where it rightly belongs, and it enables the banker to borrow more easily because the trade acceptance can be so easily rediscounted at the Federal Reserve Bank.

It is urged that it will limit certain evils in our present commercial methods, such as those pertaining to discounts, bad debts, the secret assignment of book accounts, over-buying and over-selling, and the practice of cancelling orders and returning goods without sufficient reasons.

**§ 93j. Extent of use.** The trade acceptance has now been almost universally adopted in almost all lines of trade throughout the United States; they are used by the producer of raw material, manufacturer, jobber and retailer. Banks of the United States have become well informed as to the value of trade acceptances in place of single name promissory notes and are freely discounting them at favorable rates for their customers. During the past three years the number of trade acceptances and the volume represented by dealers has increased tremendously. It is estimated at the present time that more than 25,000 of our large concerns are using trade acceptances and are warm advocates of this system.

**§ 93k. Decisions.** Any legal questions which have arisen have been decided by the application of the provisions of the Negotiable Instruments Law in force in all but one of the states. The same law which would apply to a promissory note or bill of exchange would apply to a trade acceptance.

## CHAPTER IX.

### TRANSFER—NEGOTIATION BY INDORSEMENT.

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|--|---|
| § 94. Meaning of term negotiation.               | 106. Indorsement without recourse.                      |
| 95. Who may negotiate.                           | 107. Joint indorsement.                                 |
| 96. Methods of transfer.                         | 108. Successive indorsements.                           |
| 97. Meaning of indorsement.                      | 109. Irregular or anomalous indorsement.                |
| 98. Who indorse.                                 | 110. Presumptions as to indorsement.                    |
| 99. Nature of indorsement.                       | 110a. Effect of transfer without necessary indorsement. |
| 100. Requisites of indorsement.                  | 110b. Indorsement stricken out.                         |
| 101. Varieties of indorsement.                   | 110c. Negotiable character continued.                   |
| 102. Indorsement in full or special indorsement. | 110d. Negotiations by prior party.                      |
| 103. Indorsement in blank.                       |   |
| 104. Absolute and conditional indorsement.       |   |
| 105. Restrictive indorsement.                    |   |

§ 94. **Meaning of term negotiation.** Negotiation is an act of the parties or of the law, by which the title to bills and notes is conveyed from one person to another.<sup>1</sup>

Negotiation means the act by which a bill of exchange or promissory note is put into circulation by being passed by one of the original parties to another person. If A gives B a check on C bank, and B presents the check at the counter of C, no negotiation is necessary or had. He simply demands and receives payment; but if B goes to D store and buys a bill of goods and tenders the indorsed check in payment, he negotiates the check.<sup>1a</sup>

The Negotiable Instruments Law has the following provision as to what constitutes negotiation:

*"An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery."*<sup>1b</sup>

As a bill or note is a chattel it may be sold as a chattel; it is also a chose in action and may be assigned as a chose in action;

<sup>1</sup> Odell v. Clyde, 57 N. Y. S. 126, 38 App. Div. 333; Whitworth v. Adams, 5 Rand. (Va.) 333, 415; Shaw v. Merchants Nat. Bank, 101 U. S. 557, 562, 25 L. Ed. 892.

<sup>1a</sup> Aurora State Bank v. Hayes-Eames Elevator Co., 88 Neb. 187, 190; Seaman v. Muir, — Ore.—, 144 Pac. 121.

<sup>1b</sup> Neg. Inst. Law, § 30.

and as it is also a negotiable instrument it may be transferred by indorsement according to the rules of the law merchant.<sup>2</sup>

**§ 95. Who may negotiate.** In general, a bill or note must be negotiated by the *de facto* holder, that is, the person in possession of a bill or note and to whom it is payable, whether his possession be lawful or not.<sup>3</sup> And in such sense it is broader in significance than the term "holder," which customarily means lawful holder. If the bill or note is payable to bearer the person in possession is the *de facto* holder, but if the bill or note is payable to order, the *de facto* holder must have possession and be the person to whom it is payable.<sup>4</sup> But if the name is misspelled, or wrongly designated, the holder may negotiate by writing the name as in the bill, and then his true name. So the person who obtains title by transfer of act of law is a *de facto* holder.<sup>5</sup>

**§ 96. Methods of transfer.** There are four methods of transfer, viz.: by assignment, by operation of law, by indorsement, and by delivery.

The holder of a bill or note may transfer it by assignment the same as any other chose in action.<sup>6</sup> Where the holder of a bill payable to order transfers it without indorsement it operates as an equitable assignment, and the transferee may compel indorsement.<sup>7</sup> And when indorsement is subsequently obtained, the transfer operates as a negotiation from the time when given,<sup>8</sup> unless the indorsement was omitted at the time of transfer by fraud, accident or mistake, in which case it operates from the time of the transfer.<sup>9</sup>

The full title to a bill or note passes, without either assignment, indorsement, or delivery, that is, by operation of law, (a) by the death of the holder,<sup>10</sup> where the title vests in his personal

<sup>2</sup> Willis v. Barrett, 2 Stark, 29; Bryant v. Eastman, 7 Cush. 111.

<sup>3</sup> Collins v. Gilbert, 94 U. S. 753; Wilson Sewing Mach. Co. v. Spears, 50 Mich. 534, 15 N. W. 894; Everett v. Bank, 66 N. Y. 14.

<sup>4</sup> Jackson v. Love, 82 N. C. 405; Lancaster Nat. Bank v. Taylor, 100 Mass. 18, 97 Am. Dec. 70, 1 Am. Rep. 71; Durein v. Moeser, 36 Kan. 441, 13 Pac. 797.

<sup>5</sup> Earhart v. Grant, 32 Ia. 481.

<sup>6</sup> Mitchell v. Walker, 17 Fed. Cas. No. 9,670; Deshler v. Guy, 5 Ala. 186; Biscoe v. Sneed, 11 Ark. 104.

<sup>7</sup> Brown v. Wilson, 45 S. C. 519, 23 S. E. 630, 55 Am. St. Rep. 779; Contro v. Rafferty, 7 Montreal Super. Ct. 146; Schoepfer v. Tommack, 97 Ill. App. 562.

<sup>8</sup> Goshen Nat. Bank v. Bingham, 118 N. Y. 349, 23 N. E. 180; Osgood v. Artt, 17 Fed. 575; Hays v. Plummer, 126 Cal. 107, 58 Pac. 447, 77 Am. St. Rep. 153.

<sup>9</sup> Beard v. Dedolp, 29 Wis. 136.

<sup>10</sup> Wooley v. Lyon, 117 Ill. 244, 6 N. E. 885, 57 Am. Rep. 867; Campbell v. Brown, 64 Ia. 425, 20 N. W. 745, 52 Am. Rep. 446.

representative, or (2) by the bankruptcy of the holder,<sup>11</sup> where title vests in his assignee or trustee, or (3) in some jurisdictions, where the holder is an unmarried woman, on her subsequent marriage the title vests in her husband,<sup>12</sup> or (4) upon the death of a joint payee or indorsee, in which case the general rule is that the title vests at once in the surviving payee or indorsee.<sup>13</sup>

The legal title to an instrument made payable to order can regularly be transferred only by indorsement.<sup>14</sup> The transferee of an instrument made payable to order without indorsement is the equitable owner, and takes it subject to all the equities vested in prior parties.<sup>15</sup> The indorsement must be written on the bill itself, or on a slip of paper attached thereto called an "Allonge" and considered a part of the bill.<sup>16</sup> The indorsement may be on the face of the bill. When the note or bill is made or becomes payable to bearer, it is transferable by delivery without indorsement.<sup>17</sup>

**§ 97. Meaning of indorsement.** The literal meaning of indorsement is writing on the back, derived from the Latin *in dorsa*. In this connection, the word is used to indicate a legal transaction, effected by a writing of one's own name on the back, whereby one not only transfers one's full legal title to the paper transferred, but likewise enters into an implied guaranty that the note or instrument will be duly paid. An acceptance applies to bills alone, while indorsement applies to both bills and notes. The indorsement cannot be by parol and the proper place for writing it is on the back of the instrument.<sup>18</sup> But the name may be stamped on the back of the instrument, by one having authority to do so, and with intent to indorse and be a valid indorsement.<sup>19a</sup> "*The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without*

<sup>11</sup> *Roberts v. Hall*, 37 Conn. 205, 9 Am. Rep. 308; *Billings v. Collins*, 44 Me. 271.

<sup>12</sup> *Coles v. Davis*, 1 Campb. 485.

<sup>13</sup> *Draper v. Jackson*, 16 Mass. 480; *Allen v. Tate*, 58 Miss. 585; *Sanford v. Sanford*, 45 N. Y. 723. Some jurisdictions have statutes contra.

<sup>14</sup> *Hopkins v. Manchester*, 16 R. I. 663, 19 Atl. 243, 7 L. R. A. 387; *Chadron Bank v. Anderson*, 6 Wyo. 518, 48 Pac. 197.

<sup>15</sup> *Pavey v. Stauffer*, 45 La. Ann. 353, 12 So. 512, 19 L. R. A. 716;

*Bishop v. Chase*, 156 Mo. 158, 56 S. W. 1080, 79 Am. St. Rep. 515.

<sup>18</sup> *Crosby v. Roub*, 16 Wis. 645; *Folger v. Chase* 18 Pick. 63; *French v. Turner*, 15 Ind. 59.

<sup>19</sup> *Wilton v. Williams*, 44 Ala. 347; *Haines v. Dubois*, 30 N. J. L. 259.

<sup>20</sup> *Freund v. Importers Nat. Bank*, 76 N. Y. 352; *Partridge v. Davis*, 20 Vt. 499; *Gorman v. Ketcham*, 33 Wis. 427.

<sup>20a</sup> *Mayers v. McRimmon*, 140 N. C. 640.

*additional words, is a sufficient indorsement.*"<sup>21</sup> An indorsement alone without delivery conveys no title. Indorsement means an indorsement completed by delivery.<sup>22</sup> An indorsement is usually written on the back of the instrument, but the place is not essential. If the payee write his name on any part of the instrument, with the intention of indorsing it, that is sufficient indorsement. The law looks to the intention of the parties rather than to the form as to indorsement.<sup>22a</sup> A person writes certain words upon the back of the instrument: was it the intention to indorse the instrument or do something else? And the law is very apt to consider any words as an indorsement rather than something else.<sup>23</sup> The Negotiable Instruments Law states: "*Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is deemed to be an indorser.*"<sup>23a</sup> And a further section of the law states: "*A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.*"<sup>24</sup> There is one exception, however, and that is in the case of a guarantor, or a guarantee written on the back of an instrument.<sup>25</sup> And it should be noted that there is a difference between a surety and a guarantor. A guarantor promises to account for the debt, default, or miscarriage of another person. The surety is bound in his own right with his principal and as an original promisor. He is the debtor from the beginning and is held to know of the default of the principal. On the other hand, the contract of the guarantor is his own separate contract. It is in the nature of a warrant by himself that the thing to be done by the principal shall be done. The contract is not his contract and he is not bound to take notice of non-performance. A surety obligation is a primary obligation. The surety and the principal may be joined as defendants in one suit, or the surety may be sued alone. So, we see, then, there is that exception as to a guaranty; when a guarantee is

<sup>21</sup> Neg. Inst. Law, § 31, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>22</sup> Neg. Inst. Law, § 2 (191), where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>22a</sup> Haines v. Dubois, 29 N. J. Law 259.

<sup>23</sup> Myers v. Wright, 33 Ill. 284;

Brown v. Butchers etc. Bank, 6 Hill (N. Y.) 443, 41 Am. Dec. 755.

<sup>23a</sup> Neg. Inst. Law, § 17, sub. 6.

<sup>24</sup> Neg. Inst. Law, § 63, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>25</sup> Edgerly v. Lawson, 176 Mass. 551, 57 N. E. 1020, 51 L. R. A. 432; Ely v. Bibb, 4 J. J. Marsh. (Ky.) 71. See Chap. XXI on Suretyship and Guaranty.

written on the back of an instrument it will not be construed as an indorsement, but most any other agreement or arrangement will be construed as an indorsement.

**§ 98. Who indorse.** The party to whose order the instrument is made payable should indorse the instrument.<sup>26</sup>

If the name of the payee or indorsee is wrongly designated he may indorse the paper as described. The Negotiable Instruments Law states:

*"Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature."*<sup>26a</sup>

This section also applies to a name assumed in business or otherwise.

*"Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others."*<sup>27</sup>

*"Where an instrument is drawn or indorsed to a person as 'cashier' or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer."*<sup>28</sup>

The above section as to the indorsement to a person as "cashier" states an old rule of the law, for banks had uniformly indorsed paper in this manner when sent for collection.

And paper made payable to A as cashier of a bank and indorsed by him as cashier may be recovered upon by the indorsee who may show that said cashier was acting in his capacity as such in negotiating the paper.<sup>28a</sup>

The provisions of this section are not applicable where the cashier uses his individual name without the title of his office,<sup>28b</sup> and the mere possession by a bank of paper payable to its cashier in his individual name does not enable it to maintain an action thereon against the maker.<sup>28c</sup>

<sup>26</sup> Cock v. Fellows, 1 Johns. (N. Y.) 143; Freeman v. Perry, 22 Conn. 617; Woodbury v. Woodbury, 47 N. H. 11; Ellis v. Brown, 6 Barb. 282.

<sup>26a</sup> Neg. Inst. Law, § 43.

<sup>27</sup> Neg. Inst. Law, § 41, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>28</sup> Neg. Inst. Law, § 42, where

all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>28a</sup> Johnson v. Buffalo Center State Bank, 134 Iowa, 731.

<sup>28b</sup> First National Bank of Pomeroy v. McCullough, 50 Ore. 508.

<sup>28c</sup> Swanby v. Northern State Bank, 150 Wis. 572.

This section of the law refers to "other fiscal officer of a bank or corporation." Under this, paper would be deemed payable to the corporation where indorsed payable to the treasurer of a savings bank, the treasurer or secretary of a trust company or the treasurer of a town.<sup>284</sup>

§ 99. **Nature of indorsement.** As to its nature the indorsement is a contract<sup>280</sup> and also a transfer. Every indorser is a new drawer and the terms are found on the face of the bill or note. There is an exception in case the indorsement is to A and not to his order, A could not negotiate it. There is an added obligation upon the instrument aside from what appears upon the face of the instrument. The person who indorses it says, "Yes, I made that contract, but you must present that for payment and you must notify me if it is not paid. If that is presented for acceptance and not accepted, or presented for payment and not paid, then I will pay it." That is the contract that the indorser on an instrument makes. He says, "I will pay the instrument according to the face of the bill,<sup>280</sup> provided you give me notice of its non-acceptance or non-payment."<sup>281</sup> So an indorsement performs two things: It makes a contract and it transfers the instrument; the indorser says to every person on the face of that instrument and to every person who precedes him as an indorser of the instrument, "If this instrument is not paid by the person who is primarily liable on the instrument, and if you give me due notice that the instrument has not been paid, then I will pay it." That is the contract. He doesn't say that he would pay it absolutely, but "if you give me notice that the person who is liable on the instrument will not pay or has failed in some respect, I will pay the instrument." Of course, if it is a bill of exchange, and it is not accepted by the acceptor, the indorser says by indorsing it, "If it is not accepted and you duly notify me, I will then pay the instrument." In that case, if the drawee did not accept it, the drawer would be primarily liable. In the case of a note, the indorser says, "In case that instrument is not paid, and you give me notice of the fact that the maker does not pay the note, then I will pay the note myself."

<sup>280</sup> Quincy Mutual Fire Insurance Company v. International Trust Company, 217 Mass. 370.

<sup>280</sup> Furgeson v. Stapels, 83 Me. 159, 19 Atl. 158, 17 Am. St. Rep. 470; Mudd v. Harper, 1 Md. 110, 54 Am. Dec. 644.

<sup>280</sup> Van Vleet v. Sledge, 45 Fed.

743; Prentiss v. Savage, 13 Mass. 20; Woodward v. Lowry, 74 Ga. 148.

<sup>281</sup> Jones v. Robinson, 11 Ark. 504, 54 Am. Dec. 212; Beer v. Clifton, 98 Cal. 323, 33 Pac. 204, 35 Am. St. Rep. 172, 20 L. R. A. 580.



The indorsement of a bill or note implies an undertaking from the indorser to the person in whose favor it is made and to every other person to whom the bill or note may afterwards be transferred, exactly similar to that which is implied by drawing a bill, except that in the case of drawing a bill the stipulation with respect to the drawer's responsibility and undertaking do not apply.

In the beginning of the course we saw that a note might waive presentment and notice. Of course, under such circumstances it will not be necessary to make them a part of the contract that the indorser makes.

**§ 100. Requisites of indorsement.** There are certain requisites of an indorsement. The customary and mercantile form of indorsement is the signature of the indorser. But an indorsement in such words as: "For value received, I hereby assign, transfer and set over to B all my right, title, interest and claim in the within instrument." have been held to pass a legal title to the instrument and not to destroy its negotiability.

We have seen that "*the indorsement must be written on the instrument itself or upon a paper attached thereto.*"<sup>31a</sup>

It is not necessary under the law that there should be a physical impossibility of writing the indorsement on the instrument itself as it may be on an allonge, that is a paper attached to the instrument, whenever the necessity or convenience of the parties require it.

It is clear that a detached paper cannot bind one as indorser on a negotiable instrument.<sup>31b</sup>

The Negotiable Instrument Law further provides:

*"The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorseees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue."*<sup>32</sup>

Take a bill for \$500. Suppose the payee should indorse \$250 to A and \$250 to B. That could not be done, for the indorsement must be in accordance with the bill.<sup>33</sup> But if \$250 was

<sup>31a</sup> Neg. Inst. Law, § 31.

<sup>31b</sup> First Nat. Bank v. Doherty, 156 Ky. 386, 161 S. W. 211.

<sup>32</sup> Neg. Inst. Law, § 42, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>33</sup> Planters Bank of Tenn. v. Evans, 36 Tex. 592; Hughes v. Kiddell, 2 Bay (S. C.) 324; Douglas v. Wilkeson, 6 Wend. 637; Hawkins v. Cudy, 1 Ld. Raym. 360; Erwin v. Lynn, 16 Ohio St. 547.

paid on the bill, the rest could be indorsed to someone else, as the indorsement of a partial payment on the instrument does not render it non-negotiable.<sup>33a</sup> The test then is, does the transfer cut up the right of action, or does it vary the rights of the parties. If a note for value was transferred and there was a neglect to indorse it, the transferrer may be compelled, in equity, to make the indorsement.<sup>34</sup> The transferee is the rightful holder of it until it is indorsed, and equity would compel that there should be an indorsement. Suppose a case where the note was indorsed by A to B and then B indorsed it to A, each transfer being for value, can A recover from B on that indorsement? No. Because of circuity of action. If A sued B, B could turn right around and sue A. Consequently, it is held that that could not be done, unless A, in the first instance, should indorse "without recourse," and B did not.<sup>35</sup>

The indorsement must follow the tenor of the bill or note. A bill or note cannot be divided into two different parts, and one cannot accept part and not the other, or pay part of it and not pay the other part, providing it divides the cause of action. It would not be absolutely void to divide it up in this way; it would be binding between the parties, yet it would not be negotiable by the law merchant.<sup>36</sup> That means not good by the law merchant, and a complaint fails to state a cause of action at law where the plaintiff alleges that the payee had indorsed to the plaintiff a one-half interest in a note.<sup>36a</sup> Then, a second requisite is that the indorsement be by the payee or subsequent holder. And the third requisite is as to delivery. There can be no question as between the immediate parties but that a delivery is necessary, and when the instrument gets into the hands of a *bona fide* holder a delivery is necessary unless certain things arise whereby the transferrer would be estopped. And there must arise something of that nature in order to say that an indorsement is valid without delivery.

§ 101. **Varieties of indorsement.** There are various liabilities which may be engrafted on a negotiable instrument, evi-

<sup>33a</sup> Smith v. Shippey, 182 Pa. St. 24.

<sup>34</sup> Schoepfer v. Tommack, 97 Ill. App. 562; Brown v. Wilson, 45 S. C. 519, 23 S. E. 630, 55 Am. St. Rep. 779; Couter v. Rafferty, 7 Montreal Super. Ct. 146.

<sup>35</sup> Bishop v. Hayward, 4 Term R. 470; Moore v. Cross, 19 N. Y. 227;

Wilders v. Stevens, 15 Mees. & W. 208.

<sup>36</sup> Cock v. Fellows, 1 Johns. (N. Y.) 143; Newman v. Ravenscroft, 67 Ill. 493; Pease v. Dwight, 6 How (U. S.) 190.

<sup>36a</sup> Barkley v. Muller, 164 App. Div. (N. Y.) 35.

denced by the character and terms of the indorsement thereon. An indorsement may be (a) special, or (b) in blank; it may be (c) absolute, or (d) conditional; it may be (e) restrictive; it may be (f) without recourse on the indorser; and there may be (g) joint indorsements of the instrument, (h) successive indorsements, and also (i) irregular indorsements.

The Negotiable Instruments Law provides:

*"An indorsement may be either special or in blank; and it may also be either restrictive or qualified or conditional."*<sup>37</sup>

Below are given some of the most common forms of indorsement:

<p>(Indorsement in full) Pay to DONALD S. MORRIS or order. NATHAN REDDING.</p> <p>(Indorsement in blank) DONALD S. MORRIS.</p> <p>(Qualified Indorsement) Without recourse. JOSEPH THOMPSON.</p> <p>(Conditional Indorsement) Pay HENRY HUDER or order on the completion of the Newcastle Road. HENRY STEVENSON.</p>	<p>(Restrictive Indorsements)</p> <p>1. Pay only to EARL MATLOCK for collection for my account. HENRY HUDER.</p> <p>2. Pay to HENRY REEVE or order as Trustee for GEORGE GRAVES. WILLIAM ADDISON.</p> <p>(Indorsement by guaranty) For value received I hereby guaranty the payment of this note together with any costs incurred in collection. LOUIS EWBANK.</p>
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§ 102. Indorsement in full or special indorsement. A special indorsement or an indorsement in full is one which mentions the name of the person in whose favor it is made and to whom, or to whose order, the sum is to be paid. For instance: "Pay to B, or order," signed "A," is an indorsement in full by A, the payee or holder of the paper, to B.

The special indorsement is the same as an indorsement in full. It is an indorsement to someone or order: that is, *"a special indorsement specifies the person to whom, or to whose order, the instrument is to be payable."*<sup>38</sup>

The subsequent indorsee must write his order on the instrument; that is, *"the indorsement of such indorsee is necessary to*

<sup>37</sup> Neg. Inst. Law. §43, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>38</sup> Neg. Inst. Law, § 44, where

all cases directly or indirectly bearing upon or citing the Law are grouped. But see *Spence v. Robinson*, 35 W. Va. 313, 13 S. E. 1004,

*the further negotiation of the instrument.*"<sup>39</sup> And the subsequent holder of the instrument would be required to make more proof in order to recover on the instrument when it is indorsed in full. When there is a special indorsement, one endeavoring to recover from one who has received it by special indorsement must prove the signature of two persons; where it is indorsed in blank, one would have to prove the signature of the party only against whom he was endeavoring to recover.

**§ 103. Indorsement in blank.** An indorsement in blank is one which does not mention the name of the indorsee, and generally consists simply of the payee placing his name in writing on the back of the instrument.<sup>40</sup> As the law states: "*An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.*"<sup>40a</sup> The holder of a bill with a blank indorsement may, by writing a name over the indorser's signature, convert it into a special indorsement,<sup>41</sup> but such a bill if originally payable to bearer is not restrained thereby and is payable to bearer, except that the special indorser is only liable to parties making title through his indorsement.<sup>42</sup> He cannot, however, write over it any contract inconsistent with the character of the indorsement, as, for example, he could not write over it a contract of guaranty; for the effect of this would be to deprive the indorser of his right to notice in case of non-payment.<sup>42a</sup>

**§ 104. Absolute and conditional indorsements.** An absolute indorsement is one by which the indorser binds himself to pay, upon no other condition than the failure of prior parties to do so, and of due notice to him of such failure. A conditional indorsement is one by which the indorser annexes some other condition to his liability; that is, where there is some condition in the indorsement.<sup>43</sup> Now as to the condition, if it is in the indorsement, the courts hold that it is valid. There may be a valid conditional indorsement and it accomplishes justice, and yet it

<sup>39</sup> Neg. Inst. Law, § 44, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>40</sup> Neg. Inst. Law, § 44, where all cases directly or indirectly bearing upon or citing the Law are grouped. See also note 1 L. R. A. 712.

<sup>40a</sup> Neg. Inst. Law, § 34 last part.

<sup>41</sup> Illinois Conference v. Plagge,

177 Ill. 431, 53 N. E. 76, 64 Am. St. Rep. 252; Hunter v. Hempstead, 1 Mo. 67, 13 Am. Dec. 468.

<sup>42</sup> Habersham v. Lehman, 63 Ga. 383; Johnson v. Mitchell, 50 Tex. 212.

<sup>42a</sup> Belden v. Hann, 61 Iowa 42,

<sup>43</sup> McGorray v. Stockton Sav. etc. Soc., 131 Cal. 321, 63 Pac. 479; Rowe v. Haines, 15 Ind. 445, 77 Am. Dec. 101; Johnson v. Barrow, 12 La. Ann. 83.

seems to restrict the circulation of the instrument to some extent, because there is some condition attached to it. Yet it does not in any way interfere with the face of the instrument as such; it is a primary obligation when it is on the face of the instrument, and is invalid, but if it is an indorsement it is valid, and does not make the instrument a non-negotiable instrument.<sup>44</sup>

*"Where an indorsement is conditional a party required to pay the instrument may disregard the condition and make payment to the indorser or his transferee whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally."*<sup>45</sup>

Suppose an indorsement as follows: "Pay to A, or order, if he marries before he is 25." This is written on the back of the instrument and is not a part of the original instrument. Now, that is a conditional indorsement and is held good. It is not good if on the face of the instrument, but is held good if it is an indorsement. When a condition is written on the face of the instrument it is not negotiable,<sup>46</sup> but where it is written on the back the courts say it is negotiable by the law merchant. It is a contract, and the person who makes it is bound by it, providing the conditions are fulfilled.<sup>47</sup> We are now considering whether it is a good principle. Suppose this condition is written on the face of the note, it would apply to every man who indorses it, whereas, when it is written on the back by one indorser it only applies to him and not to the others.

Suppose an instrument is worded, "Pay to the order of A," and signed "B," "A" being the payee indorses it with a conditional indorsement and says, "Pay to C, provided he marries before he is 25." What is the value of that instrument? Could anybody get anything on that instrument? It means at any time he gets married *before* he is 25 years old. This is an exceptional case and really seems to make the note non-negotiable at the very first instance, but it does not, if not made contemporaneously with the instrument and a part of it. If a memorandum of agreement of the parties is written upon the bill or note contemporaneously with its execution, and intended by the

<sup>44</sup> Tappan v. Ely, 15 Wend. (N. Y.) 362; Soares v. Glyn, 8 Q. B. 24, 55 E. C. L. 24.

<sup>45</sup> Neg. Inst. Law, § 39, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>46</sup> Palmer v. Sargent, 5 Nebr. 223, 25 Am. Rep. 479; Hill v. Nutter, 82 Me. 199, 19 Atl. 170; Swank v. Nichols, 24 Ind. 199.

<sup>47</sup> Johnson v. Barrow, 12 La. Ann. 83.

parties to make a part of the note or bill, it is construed in the same manner as if in the body of the instrument.<sup>48</sup>

By the last sentence of section 39 of the law as above set out the rule is somewhat analogous to that which gives to an indorser who has paid a note in part an equitable right *pro tanto* in the proceeds, where the holder afterward collects the whole amount of the note from the maker.<sup>49a</sup>

One may indorse in such terms as to negative personal liability thus, as stated in the Negotiable Instruments Law:

*"Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability."*<sup>49b</sup>

**§ 105. Restrictive indorsement.** A restrictive indorsement is one so worded that it may restrict the further negotiability of the instrument; and it is then called a restrictive indorsement.<sup>50</sup> Thus, "Pay the contents to J. S. only," is such an indorsement.

The Negotiable Instruments Law provides:

*"An indorsement is restrictive which either (1) prohibits the further negotiation of the instrument; or (2) constitutes the indorsee the agent of the indorser; or (3) vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive."*<sup>50</sup>

*"A restrictive indorsement confers upon the indorsee the right, (1) to receive payment of the instrument; (2) to bring any action thereon that the indorser could bring; (3) to transfer his right as such indorsee, where the form of the indorsement authorizes him to do so. But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement."*<sup>51</sup>

"Pay the contents to J. S. only" is an illustration of an indorsement which prohibits the further negotiation of the instrument.

The restrictive indorsement may or may not restrict the circulation of the instrument, depending on the indorsement. There are two classes—collection indorsements and trustee in-

<sup>48</sup> *Parsons v. Jackson*, 99 U. S. 434, 25 L. Ed. 457.

<sup>49a</sup> *Madison Square Bank v. Pierce*, 137 N. Y. 444.

<sup>49b</sup> Neg. Inst. Law, § 44.

<sup>50</sup> *Fawcett v. U. S. Nat. L. Ins. Co.*, 97 Ill. 11, 37 Am. Rep. 95; *Hook v. Pratt*, 78 N. Y. 371; *Fassin v. Hubbard*, 55 N. Y. 465. See note 12 L. R. A. 370.

<sup>50</sup> Neg. Inst. Law, § 36, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>51</sup> Neg. Inst. Law, § 37, where all cases directly or indirectly bearing upon or citing the Law are grouped.

written on the back of an instrument it will not be construed as an indorsement, but most any other agreement or arrangement will be construed as an indorsement.

**§ 98. Who indorse.** The party to whose order the instrument is made payable should indorse the instrument.<sup>26</sup>

If the name of the payee or indorsee is wrongly designated he may indorse the paper as described. The Negotiable Instruments Law states:

*"Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature."*<sup>26a</sup>

This section also applies to a name assumed in business or otherwise.

*"Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others."*<sup>27</sup>

*"Where an instrument is drawn or indorsed to a person as 'cashier' or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer."*<sup>28</sup>

The above section as to the indorsement to a person as "cashier" states an old rule of the law, for banks had uniformly indorsed paper in this manner when sent for collection.

And paper made payable to A as cashier of a bank and indorsed by him as cashier may be recovered upon by the indorsee who may show that said cashier was acting in his capacity as such in negotiating the paper.<sup>28a</sup>

The provisions of this section are not applicable where the cashier uses his individual name without the title of his office,<sup>28b</sup> and the mere possession by a bank of paper payable to its cashier in his individual name does not enable it to maintain an action thereon against the maker.<sup>28c</sup>

<sup>26</sup> Cock v. Fellows, 1 Johns. (N. Y.) 143; Freeman v. Perry, 22 Conn. 617; Woodbury v. Woodbury, 47 N. H. 11; Ellis v. Brown, 6 Barb. 282.

<sup>26a</sup> Neg. Inst. Law, § 43.

<sup>27</sup> Neg. Inst. Law, § 41, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>28</sup> Neg. Inst. Law, § 42, where

all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>28a</sup> Johnson v. Buffalo Center State Bank, 134 Iowa, 731.

<sup>28b</sup> First National Bank of Pomeroy v. McCullough, 50 Ore. 508.

<sup>28c</sup> Swanby v. Northern State Bank, 150 Wis. 572.

This section of the law refers to "other fiscal officer of a bank or corporation." Under this, paper would be deemed payable to the corporation where indorsed payable to the treasurer of a savings bank, the treasurer or secretary of a trust company or the treasurer of a town.<sup>28d</sup>

§ 99. Nature of indorsement. As to its nature the indorsement is a contract<sup>29</sup> and also a transfer. Every indorser is a new drawer and the terms are found on the face of the bill or note. There is an exception in case the indorsement is to A and not to his order, A could not negotiate it. There is an added obligation upon the instrument aside from what appears upon the face of the instrument. The person who indorses it says, "Yes, I made that contract, but you must present that for payment and you must notify me if it is not paid. If that is presented for acceptance and not accepted, or presented for payment and not paid, then I will pay it." That is the contract that the indorser on an instrument makes. He says, "I will pay the instrument according to the face of the bill,"<sup>30</sup> provided you give me notice of its non-acceptance or non-payment."<sup>31</sup> So an indorsement performs two things: It makes a contract and it transfers the instrument; the indorser says to every person on the face of that instrument and to every person who precedes him as an indorser of the instrument, "If this instrument is not paid by the person who is primarily liable on the instrument, and if you give me due notice that the instrument has not been paid, then I will pay it." That is the contract. He doesn't say that he would pay it absolutely, but "if you give me notice that the person who is liable on the instrument will not pay or has failed in some respect, I will pay the instrument." Of course, if it is a bill of exchange, and it is not accepted by the acceptor, the indorser says by indorsing it, "If it is not accepted and you duly notify me, I will then pay the instrument." In that case, if the drawee did not accept it, the drawer would be primarily liable. In the case of a note, the indorser says, "In case that instrument is not paid, and you give me notice of the fact that the maker does not pay the note, then I will pay the note myself."

<sup>28d</sup> Quincy Mutual Fire Insurance Company v. International Trust Company, 217 Mass. 370.

<sup>29</sup> Furgeson v. Stapels, 83 Me. 159, 19 Atl. 158, 17 Am. St. Rep. 470; Mudd v. Harper, 1 Md. 110, 54 Am. Dec. 644.

<sup>30</sup> Van Vleet v. Sledge, 45 Fed.

743; Prentiss v. Savage, 13 Mass. 20; Woodward v. Lowry, 74 Ga. 148.

<sup>31</sup> Jones v. Robinson, 11 Ark. 504, 54 Am. Dec. 212; Beer v. Clifton, 98 Cal. 323, 33 Pac. 204, 35 Am. St. Rep. 172, 20 L. R. A. 580.



of any facts to impair its validity.<sup>61</sup> In other words, anyone who writes his name on a paper "without recourse" says "all parties to that paper are genuine." If it had been forged he would be held liable. He says, "I am the lawful holder of that paper, and I have title to it and know of no reason why you could not recover on it as a valid instrument, but one thing I do not guarantee; I do not guarantee the financial responsibility of the parties on that paper, but I do say that I hold the title to it just the same as if it were a horse I was selling you."

The regular indorser guarantees that the instrument will be paid by the other parties; that they are financially responsible, and if they do not pay it, he will see that it is paid. Indorsers "without recourse" do not make such guarantees as we have seen. "Without recourse" only applies to the person who writes those words after his name.

Now, strange to say, this does not interfere with the negotiability of the instrument. "*Such an indorsement does not impair the negotiable character of the instrument.*"<sup>62</sup> Nor does it cast any suspicion on the character of the paper. In that way the indorser restricts his liability. A party might enlarge his liability by writing over his signature an absolute guarantee, waiving the usual demand and notice of non-payment; this is a facultative indorsement.

**§ 107. Joint indorsement.** If a bill or note be made payable to several persons not partners, the transfer can only be made by a joint indorsement of all of them.<sup>63</sup>

The following provision is contained in the Negotiable Instruments Law:

*"Where an instrument is made payable to two or more payees or indorseees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others."*<sup>63a</sup>

The above section of the law really makes no change in the law as the well settled rule of the law merchant was that co-payees, not partners, must each indorse, in order to negotiate the instrument.<sup>63b</sup>

<sup>61</sup> Smith v. Corege, 53 Ark. 295, 14 S. W. 93; Hannun v. Richard son, 48 Vt. 508; Challiss v. McCrum, 22 Kan. 157; Furgerson v. Staples, 82 Me. 159, 19 Atl. 158, 17 Am. St. Rep. 470.

<sup>62</sup> Neg. Inst. Law, § 38, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>63</sup> Pitcher v. Barrows, 17 Pick. (Mass.) 361, 28 Am. Dec. 306; Cooper v. Bailey, 52 Me. 230; Hungerford v. Perkins, 8 Wis. 267. See § 98, *supra*.

<sup>63a</sup> Neg. Inst. Law, § 41.

<sup>63b</sup> Wood v. Wood, 16 N. J. L. 428; Foster v. Hill, 36 N. H. 526.

§ 108. **Successive indorsements.** When several persons indorse a bill or negotiable note in succession, the legal effect is to subject them to liability as to each other in the order they indorse.<sup>64</sup>

§ 109. **Irregular or anomalous indorsement.** When one not a party to an instrument places his name irregularly upon an instrument it is known as an irregular or anomalous indorsement.

If a note is made payable to A or bearer, and we should see indorsements on the back of the note, X, Y and Z, we would find no difficulty since the instrument is made payable to bearer; or a blank indorsement would be regular and would be valid. But suppose the instrument is made payable to the order of A, and instead of the indorsement being A's, the first indorsement, we see is the indorsement of Y. Now, Y is not a party to the instrument; the instrument has been made, say by X, and made payable to the order of A, while Y is a complete stranger to the instrument. What liability did he intend to assume by placing his name that way on the instrument? His liability is not governed by the law merchant. It does not make provision for any such person. Now, suppose that bill or note is made payable to the order of A, and A does not write his name upon the instrument, but the first name appearing on the back of the instrument is the name of B, the note or bill being made or drawn by X. X does not pay the note and A proceeds against B. It is important to know what the liability of the irregular party to the instrument is in order to know whether or not he should be given notice of the non-payment or non-acceptance of the instrument. If we hold this person who is irregular or anomalous upon the back of the instrument as an indorser, then we must perform the conditions which should be performed toward an indorser in order to hold him, and one of the conditions is, that he shall be given notice. It becomes important to know whether the name of B, or rather whether B himself is an indorser, or what his obligation is. Now, suppose B's signature was there when A took the note. Suppose when A took the note, he didn't know the maker; he said to B, "I don't know this man; I am not willing to count anything on his financial responsibility, but I tell you what I will do. If you will put your name on the back of that instrument, I will accept that as payment, because I know your responsibility; now, if you will lend credit to this instrument by putting your name on it, I will take the instrument."

<sup>64</sup> *Camp v. Simmons*, 62 Ga. 73; 39 N. W. 49; *Knox v. Dixon*, 4 La. Brewer v. Boynton, 71 Mich. 254, 466, 23 Am. Dec. 488.

B says, "All right," and does so. But B is a stranger to the instrument. What is B's liability?

Regularly, A, the payee, should indorse first because the instrument is made payable to him, and consequently, being the first indorser and no one before him on the instrument, he could only hold the parties on the face of the instrument liable; but suppose the name of this irregular person precedes him on the paper as an indorser. Wouldn't the facts indicate that he took that instrument because the name of this irregular indorser is there? In the absence of the Negotiable Instruments Law, different jurisdictions have different rules.

The Negotiable Law provides:

*"Where a person not otherwise a party to an instrument places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules: (1) If the instrument is payable to the order of a third person he is liable to the payee and to all subsequent parties. (2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer. (3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee."*<sup>65</sup>

As above stated, different jurisdictions have applied different rules as to the liability of the irregular or anomalous indorser. Some hold him as indorser,<sup>66</sup> some as maker,<sup>67</sup> and some as guarantor,<sup>68</sup> different jurisdictions make different liabilities for him. We must know what the liability of the anomalous indorser is that we may protect ourselves. If an irregular indorser is a maker or surety, it is not necessary to give him notice if the instrument is not paid, because if he is a joint maker he is primarily liable and he says absolutely that he will pay it. But if he is to be held as an indorser, his contract is to pay provided he is given notice, and if we have not given him notice, we cannot hold him liable.

The most general rules in the absence of the Negotiable Instruments Law, are as follows:

A person whose name is on the back of a bill or note, trans-

<sup>65</sup> Neg. Inst. Law, § 64, where all cases directly or indirectly bearing upon or citing the Law are grouped. See notes 18 L. R. A. 33, and 72 Am. St. Rep. 676.

<sup>66</sup> Blakeslee v. Hewett, 76 Wis. 341; Phelps v. Vischer, 50 N. Y. 69; Gilbert v. Finkbeiner, 68 Pa. St. 243.

<sup>67</sup> Dow Law Bank v. Godfrey, 126 Mich. 521; McGraw v. Union Trust Co. (Mich.), 99 N. W. 758; Union Bank v. Willis, 8 Metc. (Mass.) 504; Childs v. Wyman, 44 Me. 441.

<sup>68</sup> Ranson v. Sherwood, 26 Conn. 437; Knight v. Dunsmore, 12 Ia. 35; Chandler v. Westfall, 30 Tex. 477; Webster v. Cobb, 17 Ill. 459.

ferable by delivery, or payable to bearer, is to be deemed an indorser. A person signing on the back of a bill or note payable to order before the payee is *prima facie* presumed to be a second indorser, and not liable to the payee; but this may be rebutted by showing that his indorsement was made to give the maker credit with the payee, and he thus becomes liable as first indorser, the payee being permitted to indorse to him without recourse.

Parol evidence is always admissible in these cases to show what he intended to do under the circumstances.<sup>69</sup>

The Negotiable Instruments Law provides as follows:

*"A person placing his signature upon an instrument otherwise than a maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity."*<sup>70</sup>

§ 110. Presumptions as to indorsement. Some matters as to presumptions will be treated more fully in the Chapter on Evidence,<sup>70</sup> but for several reasons it is best to consider presumptions as to indorsements at this place.

The Law provides:

*"Except where an indorsement bears date after the maturity of the instrument every negotiation is deemed prima facie to have been effected before the instrument was overdue."*<sup>71</sup>

And where the plaintiff on the trial produced the instrument, proved the indorsement of the payee and the signature of the maker and introduced it in evidence he established *prima facie* that he became the owner of the note before it became due.<sup>72</sup>

This presumption is important since that, in order to constitute one a holder in due course, he must have taken the instrument before it was overdue.<sup>73</sup>

Another important presumption is that as to the place where the indorsement was made. In the absence of evidence to the contrary, a note is presumed to have been made at the place where it bears date.<sup>74</sup>

The place where an indorsement was made often becomes important where the law in different states varies. An indorsement in Massachusetts of an instrument executed and payable

<sup>69</sup> Good v. Martin, 95 U. S. 90; Kohn v. Consolidated Butter & Egg Co., 30 Misc. 725, 63 N. Y. S. 265. See note 18 L. R. A. 36.

<sup>70</sup> Neg. Inst. Law, § 63.

<sup>71</sup> Chapter XXV.

<sup>72</sup> Neg. Inst. Law, § 45.

<sup>73</sup> German American Bank v. Cunningham, 97 App. Div. (N. Y.) 246.

<sup>74</sup> Neg. Inst. Law, § 52.

<sup>75</sup> Finch v. Calkins, 183 Mich. 298.

in New York is governed by the law of Massachusetts as to the contract of indorsement.<sup>75</sup>

**§ 110a. Effect of transfer without necessary indorsement.** One who is the holder of negotiable paper payable to his order and who transfers it for value without indorsing it, vests in the transferee such title as he had, and in addition to this, the transferee acquires the right to have the transferer's indorsement. Thus such an instrument payable to the order A may be effectually transferred by mere delivery, and the assignee takes the legal title and may sue in his own name subject to defenses of prior parties.<sup>76</sup> The negotiation takes effect as of the time when the indorsement is actually made when it is necessary to determine whether the transferee is a holder in due course, thus the indorsement is required to constitute the transferee a holder in due course.<sup>77</sup> And an intention by both parties to have the paper indorsed is not sufficient, as it is the act of indorsement, not the intention, which negotiates the instrument.<sup>78</sup>

An indorsement after notice of a defense does not relate back to the transfer, so as to cut off intervening rights and remedies.<sup>79</sup> The holder, however, is protected against everything subsequent to delivery, as the indorsement relates back to the time of delivery as to any equity outside of the instrument itself.<sup>80</sup>

The Negotiable Instruments Law on these principles of law states:

*"Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made."*<sup>81</sup>

If the holder claims title under the above section he should from the special circumstances which bring him within this section of the Law, rather than as in the ordinary case, prove the indorsement of the payee as a part of his case.

**§ 110b. Indorsement stricken out.** The holder of a negotiable instrument may at any time strike out any indorsement which is not necessary to his title; he may strike out all intervening indorsements and aver that the first blank indorser in-

<sup>75</sup> Glidden v. Chamberlin, 167 Mass. 486.

<sup>76</sup> Smith v. Nelson, 212 Fed. Rep. 56; Martz v. State National Bank, 147 App. Div. (N. Y.) 250.

<sup>77</sup> Mayers v. McRimmon, 140 N. C. 640.

<sup>78</sup> Goshen National Bank v. Bingham, 118 N. Y. 349.

<sup>79</sup> Meuer v. Phoenix National Bank, 42 Misc. (N. Y.) 341.

<sup>80</sup> Beard v. Dedolph, 29 Wis. 136.

<sup>81</sup> Neg. Inst. Law, § 49.

dorsed immediately to him.<sup>83</sup> The striking out of such indorsement does not destroy the presumption that the one in possession is the holder thereof.<sup>83</sup> Nor is the fact material that one or more of the intermediate indorsements is restrictive.<sup>84</sup>

The striking out of the indorsements may take place at the trial and after the plaintiff has finished his case.<sup>85</sup>

The following is the provision of the Negotiable Instruments Law:

*"The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument."*<sup>86</sup>

Where an instrument is transferred by a special indorsement, the holder has no right to strike out the name of the person mentioned in such indorsement and insert his own name in the place thereof; nor can he strike out such name and convert such special indorsement into a blank indorsement.

§ 110c. **Negotiable character continued.** As a general rule it may be stated that an instrument negotiable in its origin is always negotiable, in other words, once negotiable is always negotiable. But there are exceptions to this, namely, when an instrument has been restrictively indorsed or has been discharged by payment or otherwise.

The Negotiable Instruments Law provides:

*"An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise."*<sup>87</sup>

§ 110d. **Negotiation by prior party.** A prior party back to whom a negotiable instrument has been negotiated may, under certain circumstances, reissue and further negotiate the instrument, but he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

The Negotiable Instruments Law has the following provision to such effect:

*"Where an instrument is negotiated back to a prior party, such party may, subject to the provision of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable."*<sup>88</sup>

<sup>83</sup> Preston v. Mann, 25 Conn. 127.

<sup>83</sup> King v. Bellamy, 82 Kans. 301.

<sup>84</sup> Jerman v. Edwards, 29 App. cases (D. C.) 535.

<sup>85</sup> Ensign v. Fogg, 177 Mich. 317.

<sup>86</sup> Neg. Inst. Law, § 48.

<sup>87</sup> Neg. Inst. Law, § 47, where all cases are grouped. As to the discharge of negotiable instruments, see §§ 119-125 of the Law.

<sup>88</sup> Neg. Inst. Law, § 50.

## CHAPTER X.

### TRANSFER—BY DELIVERY AND BY OPERATION OF LAW.

§ 111. In general.

§ 113. By operation of law.

112. By delivery.

§ 111. In general. Transfer without indorsement may be made by one of two methods, either by delivery<sup>1</sup> or by operation of law.<sup>2</sup>

§ 112. By delivery. The law provides: "*An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery.*"<sup>2a</sup>

The Negotiable Instruments Law has changed the law in those states where it was held that notes made payable to a person named therein or bearer must have been indorsed to pass the legal title.<sup>2b</sup> Another provision of the Law is as follows:

"*An indorsement in blank specifies no indorsee. And an instrument so indorsed is payable to bearer and may be negotiated by delivery.*"<sup>2c</sup>

One holding an indorsement in blank may transfer it without writing upon the instrument, and in this way he escapes some liability which he would otherwise have. He is only liable to the party who receives it from him, and as his name does not appear on the instrument, he has not added any credit to it.<sup>4</sup>

<sup>1</sup> Dunham v. Peterson, 5 N. D. 414, 67 N. W. 293, 57 Am. St. Rep. 556, 36 L. R. A. 232; United States v. Vermilye, 10 Blatchf. (U. S.) 280, 28 Fed. Cas. No. 16,618, affirmed 21 Wall (U. S.) 138; Marskey v. Turner, 81 Mich. 62, 45 N. W. 644; Kohn v. Watkins, 26 Kan. 691, 40 Am. Rep. 336; O'Connor v. Clarke (Cal., 1896), 44 Pac. 482. See also note 12 U. S. L. Ed. 399.

<sup>2</sup> Wooley v. Lynn, 117 Ill. 244, 6 N. E. 885, 57 Am. Rep. 867; Crist v. Crist, 1 Ind. 570; Hendric v. Richards, 57 Neb. 794, 78 N. W. 378; Billings v. Collins, 44 Me.

276; Roberts v. Hall, 37 Conn. 205, 9 Am. Rep. 308; Earhart v. Grant, 32 Ia. 481.

<sup>2a</sup> Neg. Inst. Law, § 30.

<sup>2b</sup> Davis v. First National Bank of Blakeley, 192 Ala. 8, 68 So. 261.

<sup>2c</sup> Neg. Inst. Law, § 34, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>4</sup> McDonald v. Bailey, 14 Me. 101; Crenshaw v. Jackson, 6 Ga. 509, 50 Am. Dec. 361; Smith v. Carden, 1 Swan. (Tenn.) 28.

When a person offers you an instrument by delivery when it is payable to bearer, you are not obliged to take that instrument without indorsement; if it is not indorsed by the person offering it, you need not take it.

*"Where an instrument payable to bearer is indorsed specially, it may nevertheless be further negotiated by delivery, but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement."*<sup>5</sup>

"The rule adopted in this section may be inconvenient in practice at times as, for example, when paper drawn payable to bearer is sent through the mail. But to permit the holder to make the instrument payable to a specified person, or to his order, would be to allow him to vary the contract of the acceptor or maker. Thus, if A makes his note payable to B or bearer, he does not assume the obligation of seeing that the instrument is properly indorsed; and upon no rational legal theory would it be in the power of the holder to impose upon him a duty which, by the express terms of his contract, he refused to take upon himself.

"The section cannot apply where the paper is originally made payable to order and indorsed in blank; for by section 9 a note or bill which, upon its face, is payable to order, becomes payable to bearer, only when the last indorsement is in blank; and hence, when a blank indorsement is followed by a special indorsement the instrument is not within the terms of section 9. Thus, if a check drawn to the order of A is indorsed in blank by the payee, and delivered to B, and B indorses it to the order of C, it is not payable to bearer, for the reason that the last indorsement, which by section 9 is made the test, is a special indorsement. The reason for making a distinction in this respect between instruments originally drawn payable to bearer and instruments which have become so payable because indorsed in blank is obvious. In the one case, the maker or drawer has expressly provided that the instrument shall be payable to bearer, and it cannot be made payable to order without modifying these terms. But where, upon its face, it is payable to order, a transferee, taking under a blank indorsement does not, by indorsing it specially, change its tenor as originally drawn."<sup>5a</sup>

Another provision of the Negotiable Instruments Law states:

*"The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in*

<sup>5</sup> Neg. Inst. Law, § 40, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>5a</sup> Crawford's Annotated Negotiable Instruments Law, § 40, pp. 83, 84.



*blank any contract consistent with the character of the indorsement.*"<sup>6</sup>

The person who in getting a negotiable note or bill of exchange payable to order, neglects to have the indorsement put on it, gets it just as if he had received it by assignment and takes it subject to the equities.<sup>7</sup> It is his duty to notify the parties on the instrument the same as in an assignment. If any equities accrue between the time he received the instrument and the time he secured the indorsement, the equities would run against it.<sup>8</sup> This is provided for in the Negotiable Instruments Law as follows:

*"Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires in addition the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made."*<sup>9</sup>

§ 113. **By operation of law.** Suppose A becomes a bankrupt and has in his possession an instrument calling for \$500, payable to him. That instrument vests in A's assignee in bankruptcy. There is a transfer by operation of law.<sup>10</sup> So, if a person dies leaving a certain note payable to himself, his administrator or executor gets title to that paper by operation of law.<sup>11</sup>

The person who gets the paper gets just as good title as the dead man had, if it passes or is transferred by operation of law.<sup>12</sup>

<sup>6</sup> Neg. Inst. Law, § 35, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>7</sup> Hopkins v. Manchester, 16 R. I. 663, 23 S. E. 630, 55 Am. St. Rep. 779; Hersey v. Elliott, 67 Me. 526, 24 Am. Rep. 50; Pavey v. Stauffer, 45 La. Ann. 353, 12 So. 512, 19 L. R. A. 716. But see Brown v. Wilson, 45 S. C. 519, 23 S. E. 630, 55 Am. St. Rep. 779.

<sup>8</sup> Osgood v. Artt, 17 Fed. 575; Goshen Nat. Bank v. Bingham, 118

N. Y. 349, 23 N. E. 180. But see Beard v. Dedolph, 29 Wis. 130.

<sup>9</sup> Neg. Inst. Law, § 49, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>10</sup> Roberts v. Hall, 37 Conn. 205, 9 Am. Rep. 308.

<sup>11</sup> Wooley v. Lyon, 117 Ill. 244, 6 N. E. 885, 57 Am. Rep. 867; Crist v. Crist, 1 Ind. 570; Rand v. Hubbard, 4 Metc. (Mass.) 256.

<sup>12</sup> Billings v. Collins, 44 Me. 271; Earhart v. Gant, 32 Ia. 481; Nichols v. Hill, 42 S. C. 28, 19 S. E. 1017.

## CHAPTER XI.

### TRANSFER—BY ASSIGNMENT.

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| § 114. In general.                             | § 118a. Some differences as to liability of different transferers.                          |
| 115. Assignment by a separate writing.         | 118b. Several indorsements in blank, also combination of in blank and special indorsements. |
| 116. Liability of assignor of bills and notes. |   |
| 117. Rights of parties.                        |   |
| 118. Transfer by legal process.                |   |

§ 114. **Assignment in general.** Bills of exchange and promissory notes are negotiated either by indorsement, transfer by delivery without indorsement, by operation of law or by assignment. Only negotiable instruments can be transferred by indorsement. An instrument payable to bearer may be negotiated by delivery without indorsement.<sup>1</sup> A non-negotiable instrument is transferred by assignment.<sup>2</sup> The difference between the transfer of a negotiable and a non-negotiable instrument is that the latter is transferred subject to all defenses that might have been set up against the original payee,<sup>3</sup> while the former is taken free from equitable defenses by a *bona fide* holder. Therefore the effect of the assignment of a non-negotiable instrument is that the party holding the right drops out of the contract and another takes his place. The assignee is substituted in place of the assignor. The assignee and every subsequent person to whom the instrument comes by assignment may be considered as the person who made the instrument in the first instance, and as having said and done everything in making the instrument which the original assignor said or did. Hence if the original assignor said or did something which under the ordinary law of such contracts would prevent him from enforcing the contract, or asserting his right against the other party to the original contract, the assignee, although he knows nothing of the original transaction, may be deemed to have said and done the same things. And further, if any subsequent assignee from whom, as an assignor, the holder in turn derives the contract, has done anything to prevent its enforcement against the original party, the said holder cannot

<sup>1</sup> *Dunham v. Peterson*, 5 N. D. 414, 67 N. W. 293, 57 Am. St. Rep. 556, 36 L. R. A. 232.

<sup>2</sup> *Trustees of Union College v. Wheeler*, 61 N. Y. 88; *Warner v. Whittaker*, 6 Mich. 133; *Tims v. Shannon*, 19 Md. 296.

<sup>3</sup> *Franklin v. Twogood*, 18 Ia. 515.

enforce it against the original party. Each assignee takes his chances as to the exact position in which any party making an assignment of it stands. And as it is called in law, the assignee takes the contract subject to equities; that is, to defenses to the contract which would avail in favor of the original party up to the time the notice of the assignment is given to the person against whom the contract is sought to be enforced.

A person taking an instrument negotiable by the law merchant and writing an assignment of that instrument on a separate piece of paper, takes it subject to the rules applying to assignments; that is, he takes it subject to the equities the parties had on the instrument before the assignment had been made to him. One might think that a certain instrument is in the hands of A, and that he being indebted to A, say, in the sum of \$500, that when A comes to him and wants to become indebted to him to the extent of that sum, he would be safe in making those advances to A. He is, until he gets notice to the contrary. If the original instrument has gotten into the hands of someone else by assignment, it is his duty to notify the obligor instantly of that fact so that the conditions existing between him and the party will remain unchanged. In other words, when you get an instrument by assignment, it is your duty immediately to notify the person liable on the instrument that you hold that instrument and that you hold it by assignment.<sup>4</sup> But it is not your duty so to do if the paper is negotiable by the law merchant.

**§ 115. Assignment by a separate writing.** The mode of assignment of non-negotiable instruments differs in no respect from that of any other contract.<sup>5</sup> Although some sort of written assignment is customarily employed, it may be written either on the instrument itself or on a separate piece of paper.<sup>6</sup> The instrument may be assigned on a separate paper so as to authorize an action thereon in the name of the assignee.<sup>7</sup> But the assignment of a mortgage which was given as security for the payment of a promissory note will not operate of itself in some jurisdictions as an assignment of the note.<sup>8</sup> This is the result of statutes in

<sup>4</sup> *Van Buskirk v. Insurance Co.*, 14 Conn. 141; *Merchants & Mechanics Bank v. Hewett*, 3 Ia. 93; *Richards v. Griggs*, 16 Mo. 416.

<sup>5</sup> *Maxwell v. Goodman*, 10 B. Mon. (Ky.) 286; *Stiles v. Farrar*, 18 Vt. 444; *Halsey v. Dhart*, 1 N. J. L. 109.

<sup>6</sup> *Mitchell v. Walker*, 17 Fed. Cas. No. 9,670; *Deshler v. Guy*, 5 Ala. 186.

<sup>7</sup> *Morris v. Poillon*, 50 Ala. 403; *Thornton v. Crowther*, 24 Mo. 164; *Clapp v. Cedar County*, 5 Ia. 15, 68 Am. Dec. 678.

<sup>8</sup> *French v. Turner*, 15 Ind. 59; *Doll v. Hollenbeck*, 19 Nebr. 639, 28 N. W. 286. But see *Coombs v. Warren*, 34 Me. 89; *Cortelyou v. Jones* (Cal., 1900), 61 Pac. 918.

many states which declare that the legal title of the note cannot be assigned by a separate instrument. It is presumable that an oral assignment, accompanied by a delivery of the instrument, would pass a good title to the assignee.<sup>9</sup>

§ 116. **Liability of assignor of bills and notes.** The assignor of bills and notes assumes certain liabilities by way of guaranty. But his liability is not so extensive as that of an indorser of negotiable paper.<sup>10</sup> The liability of an assignor and indorser differs principally in respect to the guaranty of the solvency of the parties to the instrument and in the guaranty that the instrument will be honored at maturity.<sup>11</sup> The assignor is not responsible for the solvency of the parties to a bill or note, neither can he be held responsible if the instrument is not paid when due, unless he had knowledge of the insolvency of the parties. The assignor warrants that the parties to the instrument were competent to contract and if any one of them is incompetent, on account of infancy, marriage, lunacy and the like, the assignor is responsible to his assignee.<sup>12</sup> There is one exception to this rule, and that is in the case of government securities. It is not warranted that all prior parties on an instrument had capacity to contract as there is an exception in case of "*persons negotiating public or corporate securities, other than bills and notes.*"<sup>12a</sup>

The assignor of an instrument warrants that the signatures and the body of the instrument are genuine,<sup>13</sup> so that if either proves to be a forgery, the money he received for the transfer can be recovered back. The assignor also warrants that he does not know anything affecting the validity or value of the instrument. To attempt to sell an instrument which one knows to be worthless is a fraud upon the purchaser, and naturally vitiates the contract of sale.<sup>14</sup>

<sup>9</sup> Moore v. Miller, 6 Oreg. 254, 25 Am. Rep. 518; Sackett v. Montgomery, 57 Nebr. 424, 77 N. W. 1083, 73 Am. St. Rep. 522; Guy v. Briscoe, 6 Bush. (Ky.), 687.

<sup>10</sup> Cochran v. Strong, 44 Ga. 636; Boylan v. Dickerson, 3 N. J. L. 24.

<sup>11</sup> Hecht v. Batcheller, 147 Mass. 335, 17 N. E. 651, 9 Am. St. Rep. 708; Lyons v. Miller, 6 Gratt. (Va.) 427, 52 Am. Dec. 129; Milligan v. Chapman, 75 Me. 306, 46 Am. Rep. 486.

<sup>12</sup> Butler v. Slocomb, 33 La. Ann. 170, 39 Am. Rep. 265; Edmunds v.

Rose, 5 N. J. L. 547, 18 Atl. 748, 14 Am. St. Rep. 704; Lobdell v. Baker, 3 Metc. (Mass.) 469.

<sup>12a</sup> Neg. Inst. Law, § 65, last clause.

<sup>13</sup> Rhodes v. Jenkins, 18 Colo. 49, 31 Pac. 491, 36 Am. St. Rep. 263; Wood v. Sheldon, 42 N. J. L. 421, 36 Am. Rep. 523; Zwazey v. Parker, 50 Pa. St. 441, 88 Am. Dec. 549.

<sup>14</sup> Brown v. Montgomery, 20 N. Y. 287, 75 Am. Dec. 404; Delaware Bank v. Jarvis, 20 N. Y. 226; May v. Dyer, 57 Ark. 441, 21 S. W. 1064.

The assignor also guarantees to the purchaser that he has a good title to the instrument and that he has a right to convey it away. If he attempts to transfer property to which he has no title he is held to have committed an actual or constructive fraud upon the purchaser, according to the knowledge or ignorance of the vendor in respect to his want of title.<sup>15</sup>

The Negotiable Instruments Law provides:

*"A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words 'without recourse' or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument."*<sup>15a</sup>

**§ 117. Rights of parties.** In the transfer of a negotiable instrument by indorsement the indorsee is the holder in due course and takes it free from all defenses, while in the transfer of a non-negotiable instrument by assignment the assignee takes the same subject to any equities between the original parties thereto, and any defenses which may be interposed by the maker. The assignment of a negotiable instrument confers upon the holder only such rights as he would acquire upon the assignment of a non-negotiable instrument.<sup>16</sup> The assignee of a non-negotiable instrument holds it subject to all equities or counterclaims between the original parties existing at the time of the assignment.<sup>17</sup> The maker of a note may set up the same defenses against it in the hands of the assignee that he might set up if it were held by the payee. But all such defenses and equities must have existed in favor of the maker prior to the assignment. The equities and defenses which can be asserted against the assignee are only such as relate to the contract between the original parties, and therefore it has been held that the assignee of a non-negotiable note is not bound to inquire whether the note was made to defraud creditors.<sup>18</sup>

The rights of the parties are often provided for by statute in the different states. These statutes usually provide that the assignee of such an instrument may in his own name recover against the person who made the same and whatever defense or

<sup>15</sup> Furgerson v. Staples, 82 Me. 159, 19 Atl. 158, 17 Am. St. Rep. 470; Merchants Nat. Bank v. Spates, 41 W. Va. 27, 23 S. E. 681, 56 Am. St. Rep. 828.

<sup>15a</sup> Neg. Inst. Law, § 38.

<sup>16</sup> May v. Dyer, 57 Ark. 441, 21 S. W. 1064; Johnson v. Welby, 2 B.

Mon. (Ky.) 122; Cochran v. Strong, 44 Ga. 636.

<sup>17</sup> Rockwell v. Daniels, 4 Wis. 432; Young v. South Tredegar Iron Co., 85 Tenn. 189, 4 Am. St. Rep. 752.

<sup>18</sup> Dalrymple v. Hillenbrand, 62 N. Y. 5, 20 Am. Rep. 438.

set-off the maker of such instrument had, before notice of assignment against an assignor, or against the original payee, he shall also have against their assignees.

The Negotiable Instruments Law provides:

*"Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires in addition the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made."*<sup>18a</sup>

In Alabama the word "holder" and "said holder" are substituted for transferor. But the use of "holder" in this connection is confusing; for by section 191 "holder" is defined to mean the payee or indorsee who is in possession of the instrument, and where the transfer is without indorsement neither the transferor nor the transferee answers to this description. In Colorado the words "if omitted by mistake, accident or fraud" are added at the end of the first sentence. In Illinois and Missouri, the words "to have the indorsement of the transferor" are struck out, and the following substituted therefor: "to enforce the instrument against one who signed for the accommodation of the transferor, and the right to have the indorsement of the transferor if omitted by accident or mistake." If this is to be taken literally, the right of the transferee to enforce the instrument against a prior party is limited to cases where such prior party has signed for the accommodation of the transferor. This is not very clear. In Wisconsin the following is added at the end of the section: "When the indorsement was omitted by mistake, or where there was an agreement to indorse made at the time of the transfer, the endorsement when made relates back to the time of transfer."

As stated in the previous chapter<sup>18b</sup> a person who in getting a negotiable note or bill of exchange payable to order, neglects to have the indorsement put on it, gets it just as if he had received it by assignment and takes it subject to the equities. It is his duty to notify the parties on the instrument the same as in an assignment. If any equities accrue between the time he received the instrument and the time he secured the indorsement, the equities would run against it.

**§ 118. Transfer by legal process.** Property may be transferred to a creditor in satisfaction of his claim by attachment,

<sup>18a</sup> Neg. Inst. Law, § 49.

<sup>18b</sup> Sec. 112 of this work.

garnishment and execution. These processes are created by statute, and whether commercial paper can be transferred by them for the satisfaction of the holder's debts depends upon the language of the particular statute under which the question arises.<sup>19</sup>

It is generally held that promissory notes and other commercial instruments cannot be garnisheed in the hands of an agent, in an attachment proceeding against the payee. Nor is commercial paper attachable for the debts of the payee, when it is in the hands of a receiver for the benefit of creditors, nor when it is placed in the hands of an agent to collect and apply the proceeds to the payment of a specific debt; and even when it is merely placed in the hands of an agent for collection or for any other purpose, resulting in benefit to the payee. It is not even subject to attachment, if the agent delivers it up to the attaching officer.

**§ 118a. Some differences as to liability of different transferrers.** Since we have now considered the liability as to the various transferrers of negotiable instruments, it might be well to summarize or set out in outline some of the differences, as follows:

Some differences as to liability of transferrers of negotiable instruments.

1. Indorser in full or special indorser. The liability of such transferrer is the complete liability of indorser; and proof of at least two signatures is necessary to recover against such transferrer unless the parties are immediate parties to the instrument.
2. Indorser in blank. The liability of such a transferrer is the complete liability of indorser; proof of one signature is all that is necessary before recovery.
3. Indorser or rather transferrer by delivery. The liability of such transferrer is binding only as to immediate parties.
4. Indorser without recourse. An indorser without recourse (a) does not guarantee the financial ability or solvency of any of the parties; (b) as distinguished from assignment no notice to the original obligor is required to be given by the holder to such transferrer.

<sup>19</sup> *Sheets v. Culver*, 14 La. Ann. Williams, 1 Minn. 54, 55 Am. Dec. 449, 33 Am. Dec. 593; *Hubbard v.* 66.

5. **Transferrer by assignment.** A transferrer by assignment (a) is not responsible for the solvency of the parties, that is, he does not warrant solvency; (b) the holder through such transferrer takes the instrument subject to equities; and (c) the holder must notify the original obligor of the assignment.
6. **Transferrer holding title by operation of law.** A transferrer holding title by operation of law should use care or he will be bound personally when he indorses the instrument.
7. **Anomalous indorser.** The rules as to the anomalous indorser are laid down in certain cases by the Negotiable Instruments Law, that is, in those cases where the signature of such indorser is written in blank on the instrument before delivery. There is a liability by such indorser to the payee as follows: (a) There is liability of a first indorser, that is to the payee, if the instrument is payable to the order of a payee who is a third party; (b) there is liability of said indorser not to the payee but as a second indorser if it is payable to the order of the maker or drawer, or payable to bearer; (c) there is liability not to payee, that is, there is a liability as a second indorser if the signature is for the accommodation of the payee; (d) no other cases are covered by the Negotiable Instruments Law.

**§ 118b. Several indorsements in blank, also combination of in blank and special indorsements.** By way of summary and illustration suppose we have five indorsements in blank upon an instrument payable to bearer; suppose the five blank indorsements are by A, B, C, D, and E, respectively, and the instrument is now in the hands of X. X may do any one of four things:

- (1) Fill up the first to himself.
- (2) Deduce his title through all.
- (3) Strike out any or all.
- (4) Turn the instrument over to a stranger without indorsement by himself.

Suppose again a case of a combination of in blank and special indorsements, that is, suppose X makes a promissory note payable to A or order, which is now in the hands of Y, the holder, and the indorsements are as follows:

- (1) A (in blank; just signs his name).
- (2) B (in blank; just signs his name).
- (3) Pay to order of D (signed) C.
- (4) D (in blank; just signs his name).
- (5) Pay to order of F (signed) E.
- (6) F (in blank; just signs his name).



In the hands of Y, the holder, and as against X, the maker, and A, the payee, the instrument is payable to bearer, because indorsed in blank. Also against the indorser B it is payable to bearer. As against C the special indorser title must be made through D and the holder must prove both C and D's signatures.

## CHAPTER XII.

### OF THE NATURE OF THE LIABILITIES OF THE PARTIES.

§ 119. In general.

120. Maker.

121. Drawer.

122. Acceptor.

§ 123. Indorser.

124. Accommodation and accommodated parties.

125. Agent.

§ 119. In general. The different parties to Negotiable Instruments have different liabilities. Some parties are primarily liable, while others are secondarily liable.

The Negotiable Instruments Law provides

*"The person primarily liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are secondarily liable."*<sup>1</sup> This is also the law generally.

§ 120. Maker. As to the liability of the maker of a negotiable instrument, the Negotiable Instruments Law provides:

*"The maker of a negotiable instrument by making it engages that he will pay it according to its tenor and admits the existence of the payee and his then capacity to indorse."*<sup>2</sup>

He not only promises the payee to pay it according to its tenor, but he promises any subsequent holder who is legally entitled to the instrument the same.<sup>3</sup> He admits that the payee is the real owner<sup>2a</sup> and as against a *bona fide* holder he admits the legal existence of the payee and his capacity to contract.<sup>2b</sup> When the instrument is payable to bearer, it is not necessary that the name of every one through whose hands it passes should appear on the instrument, because it is made payable to bearer.<sup>4</sup> Anyone bearing the paper can recover against any party on the instrument, the maker, the payee or any of the indorsers. In order to recover against one who has made it payable specially

<sup>1</sup> Neg. Inst. Law, § 192, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>2</sup> Neg. Inst. Law, § 60, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>2</sup> See *bona fide* holder. Chap. XIII.

<sup>2a</sup> Wheeler v. Barr, 7 Ind. App. 381.

<sup>2b</sup> Brickley v. Edwards, 131 Ind.

3.

<sup>4</sup> Bitzer v. Wagar, 83 Mich. 223, 47 N. W. 210; Goodpaster v. Voris, 8 Ia. 334, 74 Am. Dec. 313.

to some one, it is necessary to prove the signature of the one who has made it payable and the signature of the one to whose order it is made payable, and also the signature of any other party you are trying to recover against. The payee, when he indorses the instrument, becomes liable to parties who take the instrument after his signature is upon it.

§ 121. **Drawer.** The general law as to the liability of the drawer is clearly set out in the Negotiable Instruments Law in the following language:

*"The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it, but the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder."*<sup>5</sup>

The Colorado and Illinois Acts omit the word "subsequent" before "indorser." The District of Columbia, North Dakota and New York Acts read "accepted and paid."

The drawer by signing the instrument thereby states to the payee that if he will take it to the drawee that the latter will accept it and pay it, and if he does not and the payee gives notice to the drawer of the failure on the part of the drawee, then the drawer agrees to pay it himself. He agrees to pay it if the drawee does not, provided notice in a reasonable time is given him of that fact so that he can make himself safe.

The Negotiable Instruments Law contains the following provision as to the liability of the drawer or indorser in case of a qualified acceptance:

*"The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto."*<sup>6</sup>

<sup>5</sup> Neg. Inst. Law, § 61.

ing upon or citing the Law are grouped.

<sup>6</sup> Neg. Inst. Law, § 142, where all cases directly or indirectly bear-

§ 122. **Acceptor.** The general law as to the liability of the acceptor is clearly set out in the Negotiable Instruments Law in the following section:

*"The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance, and admits (1) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and (2) the existence of the payee, and his then capacity to indorse."*<sup>7</sup>

When the acceptor accepts it, being the drawee, he thereby says to the payee, "I recognize that signature as that of the drawer; I have funds in my possession belonging to him to the amount of this instrument, and I promise that I will accept this and I do accept it, and since it is payable ten days after sight, you bring that instrument around in ten days and I will pay it." Now, this instrument having been indorsed by the payee to A, what is the liability of the acceptor to A? Why, the acceptor says to A, "You present that instrument to me and I will pay it. I recognize that signature of the drawer, and I will vouch for that; the payee is a party who is capable and has capacity to indorse the instrument; you present the instrument to me and I will pay it." That is his contract with the indorser or holder, A. What is his contract with the drawer, It is, that he has funds in his hands belonging to the drawer, and he says to A, the drawer, "You draw upon me any time and I will accept and pay the bill. If I don't, then I am liable to you in such damages as you may suffer by my refusal to accept and pay the instrument."<sup>8</sup> The liability as to the indorsers on the back of the instrument is substantially the same.

If it appear that the acceptance is made by a person as the agent of another, such agent is not personally liable.<sup>8a</sup>

Other provisions as to the liability of the acceptor found in the Negotiable Instruments Law are as follows:

*"When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon."*<sup>9</sup>

<sup>7</sup> Neg. Inst. Law, § 62, where all cases directly or indirectly bearing upon or citing the Law are grouped.  
<sup>8</sup> Pilkington v. Woods 10 Ind. 432; Thompson v. Flower, 1 Mart.

(N. S.) La. 301; Drew v. Phelps, 18 N. H. 572.

<sup>8a</sup> Tousey v. Taw, 19 Ind. 212

<sup>9</sup> Neg. Ins. Law, § 182, where all cases directly or indirectly bearing upon or citing the Law are grouped.

"Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged."<sup>10</sup>

§ 123. **The indorser.** The indorser engages (a) that the negotiable instrument will be accepted or paid, as the case may be, according to its purport;<sup>11</sup> but this engagement is conditioned upon due presentment or demand, and notice;<sup>12</sup> (b) that it is in every respect genuine;<sup>12a</sup> (c) that it is the valid instrument it purports to be;<sup>13</sup> (d) that the ostensible parties are competent;<sup>14</sup> (e) and that he has good title to it and the right to indorse it.<sup>15</sup> And if it turns out that any of these engagements except that first named are not fulfilled, the indorser may be sued for recovery of the original consideration which has failed, or be held liable as a party, without proof of demand and notice.

The above rights inure to the *bona fide* holder of the bill, and he can sue upon it or further negotiate it, and though guilty of a fraud in parting with it, nevertheless he can give title to a *bona fide* holder for value without notice who takes it before maturity. Any irregularity, as a torn paper, or something similar, patent on the face of a bill, is equivalent to notice, and the holder who takes such an instrument will not be considered an innocent holder.<sup>16</sup> In an action by the *de facto* holder, it may be shown that he holds adversely to the true owner, and that he is agent or trustee for another person, and then any defense or set-off available against such person is available against the holder.

<sup>10</sup> Neg. Ins. Law, § 183, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>11</sup> Van Fleet v. Sledge, 45 Fed. 743; Prentiss v. Savage, 13 Mass. 20; Woodward v. Lowry, 74 Ga. 148. As to indorser's liability see 11 Am. St. Rep. 930.

<sup>12</sup> Hamer v. Brainerd, 7 Utah 245, 26 Pac. 299, 12 L. R. A. 434; Wylie v. Colter, 170 Mass. 356, 49 N. E. 746, 64 Am. St. Rep. 305; Nash v. Harrington, 1 Aik. (Vt.) 39, 16 Am. Dec. 672; McLanahan v. Brandon, 1 Mart. (N. S.) La. 321, 14 Am. Dec. 188. See note 16 U. S. L. Ed. 260.

<sup>12a</sup> Baldwin v. Threlkeld, 8 Ind. App. 312; Clark v. Trueblood, 16 Ind. App. 98.

<sup>13</sup> Furgerson v. Staples, 82 Me.

159, 19 Atl. 158, 17 Am. St. Rep. 470; Thrall v. Newell, 19 Vt. 202, 47 Am. Dec. 682. As to when indorser can allege defenses, see note 7 U. S. L. Ed. 744.

<sup>14</sup> Butler v. Slocumb, 33 La. Ann. 170, 39 Am. Rep. 265; Edmunds v. Rose, 51 N. J. L. 547, 18 Atl. 748, 14 Am. St. Rep. 704.

<sup>15</sup> Furgerson v. Staples, 82 Me. 159, 19 Atl. 158, 17 Am. St. Rep. 470; Merchants Nat. Bank v. Spates, 41 W. Va. 27, 23 S. E. 681, 56 Am. St. Rep. 828. As to warranty implied by indorsement see note 7 Am. St. Rep. 365.

<sup>16</sup> Skillman v. Titus, 32 N. J. L. 96; Chattanooga First Nat. Bank v. Stockwell, 92 Tenn. 252, 21 S. W. 523, 20 L. R. A. 605.

*"Every indorser who indorses without qualification warrants to all subsequent holders in due course (1) the matter and things mentioned in subdivisions one, two and three of the next preceding section; and (2) that the instrument is at the time of his indorsement valid and subsisting. And, in addition, he engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it."*<sup>17</sup>

The indorser is estopped to deny the legality or validity of the note<sup>17a</sup> and he undertakes that if the note is not paid at maturity and he has due notice of its dishonor, he will pay it.<sup>17b</sup>

*"Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser."*<sup>18</sup>

*"As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsers who indorse are deemed to indorse jointly and severally."*<sup>19</sup>

What liability does an indorser have to the preceding indorsers? He can recover against any who precede him, but none who succeed him.

*"The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon."*<sup>20</sup>

In other words, the parties who have received the instrument and passed it on to someone else are estopped to set up that the other parties did not have capacity. Of course, a minor has a right to set up the defense that he himself did not have the capacity. These parties, then, guarantee or warrant the capacity of the previous parties to make the instrument, but this does not estop the party who is really incapacitated from setting that up.

There is some conflict as to the liability of an indorser without recourse, but the general rule is that a person who indorses

<sup>17</sup> Neg. Inst. Law, § 66, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>17a</sup> Hoffman v. Hollingsworth, 10 Ind. App. 353.

<sup>17b</sup> Alleman v. Wheeler, 101 Ind. 141.

<sup>18</sup> Neg. Inst. Law, § 67, where all

cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>19</sup> Neg. Inst. Law, § 68, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>20</sup> Neg. Inst. Law, § 22, where all cases directly or indirectly bearing upon or citing the Law are grouped.

without recourse makes all warranties any other indorser does, except that he does not warrant the capacity financially of the other parties to pay. He does not agree to indemnify the other parties on the instrument. The indorser without recourse makes this representation and warranty to every person who gets the instrument, that the parties had capacity and the instrument is a valid instrument as to form, etc.,<sup>21</sup> but he does not warrant the financial responsibility of the parties. By placing his name there, he makes that contract with everybody who takes the instrument.

When an instrument is made payable to bearer and has passed from hand to hand by mere delivery, the indorsee or holder has no right to recover from any other party who has passed it on by delivery unless that party's name appears on the instrument. There can be no recovery against the party whose name is not on the instrument, unless the party who is endeavoring to recover from him has immediately received that instrument from him. Those are the liabilities of the indorser without recourse and the indorser by mere delivery.

The Negotiable Instruments Law covers these principles in the following section:

*"Every person negotiating an instrument by delivery or by a qualified indorsement warrants<sup>22</sup> (1) that the instrument is genuine and in all respects what it purports to be; (2) that he has a good title to it; (3) that all prior parties had capacity to contract; (4) that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes."*

There is the following provision as to the liability of an agent or broker who negotiates an instrument without indorsement:

*"Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section sixty-five of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent."<sup>23</sup>*

**§ 124. Accommodation and accommodated parties.** The following provision is found in the Negotiable Instruments Law:

<sup>21</sup> Lobbell v. Baker, 3 Metc. (Mass.) 469; Watson v. Cheshire, 18 Ia. 202, 87 Am. Dec. 382; Hanmun v. Richardson, 48 Vt. 508, 21 Am. Rep. 152; Ware v. McCormack, 96 Ky. 139, 28 S. W. 157.

<sup>22</sup> Neg. Inst. Law, § 65, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>23</sup> Neg. Ins. Law, § 69, where all cases directly or indirectly bearing upon or citing the Law are grouped.

*"An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party."*<sup>24</sup>

Here is a lending of the credit of one person to another for accommodation. A wishes to pay an obligation of \$500 and he has no credit; he says to B: "Put your name on this paper and I will have money by the time it comes due and pay it and I will see that you do not suffer any damage." So B signs. When that instrument becomes due, if A does not pay and B has to, then B can recover from him. But since B has received no consideration there can be no recovery as against him by A.

As stated above, an accommodation contract may be described as a gift by A to B of A's credit, to be offered to another on payment of value. A contract of such a nature may take any of the forms of the law merchant; a promissory note may be made or indorsed for accommodation; a bill of exchange may be drawn, accepted or indorsed for accommodation, that is, most any party to the instrument may be an accommodation party. The accommodation party is the one who has signed for the purpose of lending his name to some other person as a means of credit—he is also called the accommodating party. The party to whom the credit is loaned is called the accommodated party.

Certain liabilities arise as a result of the relations established. The accommodated party is liable to the accommodating or accommodation party. Thus the drawer may show that he accepted and paid the bill for the accommodation of the drawer and then the law will imply an undertaking on the part of the drawer, to indemnify the acceptor who, on such implied obligation, may have an action against the drawer. Such action is not brought upon the bill, for when the instrument is paid it is extinguished and no longer exists as a valid instrument and consequently the instrument not being in existence, the acceptor cannot recover upon the instrument itself.<sup>24a</sup>

As already stated, there is no liability of the accommodating party or accommodation party to the accommodated party or the person for whose accommodation he has given it, as the obliga-

<sup>24</sup> Neg. Inst. Law, § 29, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to liability of accommodation maker and indorser see notes 5 L.

R. A. 698, and 31 Am. St. Rep. 745. And as to accommodation indorsement by bank see note 23 L. R. A. 836.

<sup>24a</sup> Dickerson v. Turner, 15 Ind. 4.



tion is without consideration and a *nudum pactum*. The accommodating party is liable to all other *bona fide* holders who take the instrument.

Suppose A lends you his credit for a special purpose and you use that credit for some other purpose and the person who takes that credit knows that it has been loaned for a particular purpose, then the person who takes that credit cannot recover. He cannot recover because he knows that the credit has been diverted from the purpose for which it was given—he has notice.

Where a bill is drawn or accepted, or a note made or indorsed for accommodation, with an agreement that it shall be used for a particular purpose, any diversion in its use operates as a discharge of the accommodation party as to all other parties who have knowledge of such diversion.<sup>25</sup>

It is immaterial that paper executed or indorsed for accommodation is not used in precise conformity with agreement, when it does not appear that the accommodation party had any interest in the manner in which the paper was to be applied.<sup>26</sup> No change in the mere mode or plan of raising the money, though not applied to the purpose intended by the accommodation party, will constitute a misappropriation. In order to constitute a misappropriation, there must be a fraudulent diversion from the original object and design; and it is now well settled that where a note is indorsed for the accommodation of the maker, to be discounted at a particular bank, it is no fraudulent misappropriation of the note, if it is discounted at another bank<sup>26a</sup> or used in the payment of a debt or otherwise for the credit of the maker.<sup>27</sup> If the note has effected the substantial purpose for which it was designed by the parties an accommodation maker or indorser cannot object that the accommodation was not effected in the precise manner contemplated, where there is no fraud, and the interest of the indorser is not prejudiced.<sup>28</sup>

It is the general rule that an accommodation party lends his credit only for the period specified in the instrument, that is, until its maturity; and if transferred thereafter such party should not be made liable except as an ordinary party to commercial

<sup>25</sup> Stoddard v. Kimball, 6 Cush. (Mass.) 469; Daggett v. Whiting, 35 Conn. 372; Small v. Smith, 1 Denio. (N. Y.) 583.

<sup>26</sup> Felters v. Muncie Nat. Bank, 34 Ind. 256; Quinn v. Hard, 43 Vt. 375.

<sup>26a</sup> Reed v. Trentman, 53 Ind. 438.

<sup>27</sup> Powell v. Waters, 17 Johns. (N. Y.) 176; Bank of Chenango v. Hyde, 4 Cow. (N. Y.) 567.

<sup>28</sup> Jackson v. Bank, 42 N. J. L. 178; Dum v. Weston, 71 Me. 270; Briggs v. Boyd, 37 Vt. 538. As to fraudulent diversion see note 31 Am. St. Rep. 748.

paper.<sup>29</sup> However, it should be borne in mind that the accommodation indorser's liability may become fixed by presentment and notice and so survive maturity, and he would thus continue liable; but of course if not issued until after maturity or until overdue, the accommodating indorser is not liable.

The presumption is that such an indorser is subject to the same liabilities as are imposed by the statute upon general indorsers.

And their rights are largely the same. Thus one indorsing an instrument for the accommodation of the maker cannot be charged without a demand.

While a corporation has, under certain circumstances, the general power to bind itself by promissory notes and contracts of indorsement, made in the general course of its business, it has no power to make or indorse notes for the accommodation of others.<sup>29a</sup> The validity of such paper can also be assailed upon the theory that the officer of a corporation who executes it cannot so bind the corporation in a matter not connected with its business, or in which it has no beneficial interest. But in the hands of a *bona fide* purchaser for value, accommodation paper duly executed by the officers of a corporation can be enforced against the corporation.<sup>30</sup> The rules applicable to the rights of *bona fide* holders of accommodation paper, signed by one of a partnership without the consent of his copartners, can also be applied in the case of similar paper executed by the officers of a corporation. An accommodation bill or note accepted, made or indorsed by one member of a firm cannot be enforced against the firm by one who took it with knowledge of the accommodation character of the firm's signature, unless all the partners assented thereto.<sup>30a</sup>

Successive accommodation parties are liable to each other in succession, according to the order in which their names appear upon the instrument.<sup>31</sup> The reason for this rule may be found in the presumption that each accommodation indorser placed his name upon the instrument trusting in the strength of the prior accommodation indorsers. Facts may be shown as in the case of

<sup>29</sup> *Chester v. Dorr*, 41 N. Y. 279; *macy Co. v. Trust Co.*, 97 Ga. 573, 25 S. E. 171.  
<sup>29a</sup> *Bower v. Hastings*, 36 Pa. St. 285; *Battle v. Weems*, 44 Ala. 105.

<sup>30</sup> *Smead v. Railroad*, 11 Ind. 104. <sup>30a</sup> *Beach v. The State Bank*, 2 Ind. 488.

<sup>31</sup> *Nat. Bank v. Young*, 41 N. J. L. 531, 7 Atl. 488; *Am. Trust & Savings Bank v. Gluck*, 68 Minn. 129, 70 N. W. 1085; *Jacobs Pharmacy Co. v. Trust Co.*, 97 Ga. 573, 25 S. E. 171.  
<sup>31</sup> *Aiken v. Barkley*, 2 Speers (S. C.) 747, 42 Am. Dec. 317; *U. S. Bank v. Beirne*, 1 Gratt. 234, 42 Am. Dec. 551; *Moody v. Findley*, 43 Ala. 167.

other indorsers to show that the liability is joint because of an agreement between them to be bound jointly and not severally. If no such agreement is shown such indorsers are not co-sureties and there can be no right of contribution among them.<sup>32</sup>

§ 125. **Agent.** The general rule as to the liability of an agent is found in a section of the Negotiable Instruments Law which reads as follows:

*"Whether the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character without disclosing his principal, does not exempt him from personal liability."*<sup>33</sup>

The above section of the statute as to the non-liability of the agent who has been duly authorized changes the rule in many jurisdictions. The section reaches the right result as individual liability should not be imposed upon an agent who, being duly authorized to sign, discloses the name of a principal on the instrument, and indicates that he himself is an agent or officer, without regard to the form in which this is done.

It has been argued that an agent signing without authority of the principal is, by implication, liable on the instrument under this section. In support of this it is stated that the agent should know whether he has authority and it increases negotiability and causes no confusion as to the amount recoverable.

The digest of the annotated cases in another part of this work should be consulted as to the course of judicial decisions on this section.

<sup>32</sup> Kirschner v. Conklin, 40 Conn. 77; Moore v. Cushing, 162 Mass. 594, 39 N. E. 177, 44 Am. St. Rep. 393; U. S. Bank v. Beirne, 1 Gratt 234, 42 Am. Dec. 551.

<sup>33</sup> Neg. Inst. Law, § 39 (20), where all cases directly or indirectly bearing upon or citing the Law are grouped.

## CHAPTER XIII.

### NATURE AND RIGHTS OF A BONA FIDE HOLDER OR A PURCHASER FOR VALUE WITHOUT NOTICE.

§ 126. Bona fide holder for value without notice—In general.

§ 127. Good faith or bona fide.  
128. Holder for value.  
129. Holder without notice.

§ 126. Bona fide holder for value without notice—In general. The following provisions are found in the Negotiable Instruments Law and contain a correct statement of the law generally:

*"A holder in due course is a holder who has taken the instrument under the following conditions:*

1. *That it is complete and regular upon its face.*
2. *That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact.*
3. *That he took it in good faith and for value.*
4. *That at time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it."*<sup>1</sup>

*"A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon."*<sup>2</sup>

*"In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter."*<sup>3</sup>

*"Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who*

<sup>1</sup> Neg. Inst. Law, § 52, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to rights of bona fide holder, see notes 5 U. S. L. Ed. 87, also 10 U. S. L. ed. 473.

<sup>2</sup> Neg. Inst. Law, § 57, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>3</sup> Neg. Inst. Law, § 58, where all cases directly or indirectly bearing upon or citing the Law are grouped.

*has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title."*<sup>4</sup>

§ 127. **Good faith or bona fide.** The term "*bona fide* holder" or holder in good faith, means a holder according to the law merchant, without knowledge or notice of equities of any sort which could be set up against a prior holder of the instrument.<sup>5</sup> Absence of knowledge of the defense, when the instrument was taken, is the essential element in the matter of *bona fide*.<sup>6</sup>

That is, the holder, in order to be entitled to protection against offsets and equities and defenses based upon frauds, pleaded by prior parties, must have acquired the paper in good faith from his predecessor. If the holder's acquisition of the paper be in any respect fraudulent he cannot claim the position of a *bona fide* holder.<sup>7</sup>

The Negotiable Instruments Law provides:

*"The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud."*<sup>8</sup>

§ 128. **Holder for value.** We have taken up the consideration of the expression "*bona fide* holder for value without notice"<sup>9</sup> and "*bona fide* purchaser for value without notice."<sup>10</sup> This expression becomes important in case of equities or personal defenses. If there are certain equities or personal defenses against an instrument a *bona fide* holder for value without notice may nevertheless recover against any party to the instrument. Of course, any party to an instrument who had an equity or per-

<sup>4</sup> Neg. Inst. Law, § 59, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>5</sup> Stephens v. Olson, 62 Minn. 295, 64 N. W. 898; Whistler v. Forster, 14 C. B. N. S. 248, 108 E. C. L. 248.

<sup>6</sup> Helner v. Krolick, 36 Mich. 371; Raphael v. Bank of England, 17 C. B. 161, 84 E. C. L. 161.

<sup>7</sup> Angier v. Brewster, 69 Ga. 362; Hickson v. Earley, 62 S. C. 42, 39 S. E. 782.

<sup>8</sup> Neg. Inst. Law, § 55, where all

cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>9</sup> Matthews v. Poythress, 4 Ga. 287; Limerick Nat. Bank v. Adams, 40 Atl. 166, 70 Vt. 132.

<sup>10</sup> Young v. Schofield, 132 Mo. 650, 34 S. W. 497; Ten Eyck v. Whitbeck, 135 N. Y. 40, 31 N. E. 994, 31 Am. St. Rep. 809; Scott v. McGraw, 3 Wash. St. 675, 29 Pac. 260.

sonal defense can be recovered against by a *bona fide* holder for value without notice, but the *bona fide* holder for value cannot recover against one who has an absolute defense, for such defense attaches to the thing itself and can be set up against anybody. But, if the defense is a personal defense, it cannot be set up successfully.<sup>11</sup> There is considerable in the expression "*bona fide* holder for value." What is a "holder for value" and a "*bona fide* holder without notice?" A person is a holder for value who has given in return value, just the same as in any contract, or according to the Negotiable Instruments Law: "*Value means valuable consideration.*"<sup>12</sup>

A bank that has acquired possession of a negotiable instrument and given credit to the one who presented it in his deposit account for the proceeds has given value so as to be a holder in due course.<sup>13</sup>

There are two different classes of cases, where there is some conflict of authority as to whether or not value has been given. One instance is where an instrument is given as collateral security. A not only makes his own note but gives the note of B as collateral security, and the better opinion is, that a note given as collateral security has been given for value, and a person who has an equity or a personal defense which he could set up against another could not set it up successfully in such a case, because the person who holds the security holds it for value.<sup>14</sup> Some jurisdictions hold that the collateral note must be given at the time of the loan;<sup>14</sup> they say it must be in forbearance to sue, or extension of time, in order that some consideration may arise for the giving of the security.<sup>15</sup> By the weight of authority, the better rule is to the effect that the holder of a collateral note is a holder for value and may recover from the parties liable upon the instrument.<sup>16</sup>

<sup>11</sup> As to personal and real defenses see, Chap. XIV.

<sup>12</sup> Neg. Inst. Law, § 191, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>13</sup> Old National Bank of Spokane v. Gibson, — Wash. —, 179 Pac. 117, 6 A. L. R. 247. See note 6 A. L. R. 252.

<sup>14</sup> Silbley v. Robinson, 10 Shep. (Me.) 70; Swift v. Tyson, 16 Pet. 1; Grocers' Bank v. Penfield, 69 N. Y. 502, 25 Am. Rep. 231.

<sup>15</sup> Vann v. Marbury, 100 Ala. 438, 46 Am. St. Rep. 75, 14 So. 273, 23 L. R. A. 325.

<sup>16</sup> Smith v. Bibber, 82 Me. 34, 19 Atl. 89, 17 Am. St. Rep. 464; Porter v. Andrus, 10 N. D. 558, 88 N. W. 567.

<sup>17</sup> Maitland v. Citizens' Nat. Bank, 40 Md. 540, 17 Am. Rep. 620; Best v. Krell, 23 Kan. 482, 33 Am. Rep. 185; Birket v. Edward, 68 Kan. 295, 74 Pac. 1100.

*Contra*, Porter v. Andrus, 10 N. D. 558, 88 N. W. 567; Rosborough v. Messich, 6 Ohio St. 448, 67 Am. Dec. 346; Vollertein v. Howell, 37 Tenn. (5 Sneed) 441.

It is now settled in those states which have adopted the act<sup>17</sup> that a note transferred before maturity to a holder in due course, as collateral security for a pre-existing debt, is transferred for value, and the holder takes it free from defenses or set-offs existing between the original parties.

The Negotiable Instruments Law provides as follows:

*"Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time."*<sup>17a</sup>

The second class of instruments is where a note is given for a pre-existing debt; for example when an account, or something of that kind comes due, a note is given for the debt. What was the consideration? All the goods have been bought and used; it is a debt; can we say there has been a consideration? In some jurisdictions, the note itself is enough consideration; other jurisdictions say that there must be some new consideration, forbearance or something of that nature. Still other jurisdictions hold that it must be in extinguishment of the debt. In other words, if A had an account of \$50 and that account is due and unpaid, and A gives a promissory note for \$50 and that is taken in extinguishment of the debt, and if afterward any proceeding is brought on that note, the holder of the note would be a holder for value; or, if an extension of time has been given, then the holder of the instrument would be a holder for value.

Conceding that it is an established rule that an antecedent or pre-existing debt constitutes value, there can be no question but that where paper is transferred in payment of a pre-existing debt, the transferee becomes a holder for value, and takes the paper free from all defenses and equities existing between the original parties.<sup>18</sup>

Those two classes of cases are the ones upon which there is a great diversity of opinion. In all other cases it is whether or not value was given, that is, the principles of contract are applied.

*"Where value has at any time been given for the instrument the holder is deemed a holder for value in respect to all parties who became such prior to that time."*<sup>19</sup>

<sup>17</sup> Neg. Inst. Law, § 25, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>17a</sup> Neg. Inst. Law, § 25, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>18</sup> *Yellowstone Nat. Bank v. Gagnon*, 19 Mont. 402, 48 Pac. 762, 61 Am. St. Rep. 520, 44 L. R. A.

243; *Breckenridge v. Lewis*, 84 Me. 349, 24 Atl. 864, 30 Am. St. Rep. 353; *Herman v. Gunter*, 83 Tex. 66, 18 S. W. 428, 29 Am. St. Rep. 312.

<sup>19</sup> Neg. Inst. Law, § 26, where all cases directly or indirectly bearing upon or citing the Law are grouped.

If one becomes a *bona fide* holder for value of a bill of exchange before acceptance, it is not essential to his right to enforce it against a subsequent acceptor that any additional consideration should proceed from him to the drawer.<sup>20</sup>

*"Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien."*<sup>21</sup>

A banker's lien would protect a bank having possession of the bills or notes of a customer to the extent of the balance due such bank from such customer,<sup>22</sup> and a transfer of such an instrument to any other holder as collateral security for the payment of a debt due such holder from the person who transfers the note, makes the holder a pledgee and gives him a lien to the extent of the debt.<sup>23</sup>

§ 129. **Holder without notice.** The third part of the principle is that the holder must be one "without notice," a *bona fide* holder, a holder for value "without notice." By that we mean that the person must not have any notice, either actual or constructive, of these defenses.<sup>24</sup> If he does have notice, he cannot recover against any one who has these defenses. If a person takes an instrument knowing of the equities, they can be set up against him.

That a note is payable to the order of the maker is not sufficient to excite the suspicion of a purchaser so as to prevent his becoming a *bona fide* holder.<sup>24a</sup>

The Negotiable Instruments Law provides:

*"Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him."*<sup>25</sup>

An amount paid for an instrument, if a trifling sum, may of itself establish notice. But it is difficult to lay down the exact

<sup>20</sup> Heuertematte v. Morris, 101 N. Y. 70.

<sup>21</sup> Neg. Inst. Law, § 27, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>22</sup> Nat. Bank v. Ins. Co., 104 U. S. 54; Straus v. Tradesman Nat. Bank, 122 N. Y. 379; Clark v. Bank, 160 Mass. 26.

<sup>23</sup> Anderson v. Bank, 98 Mich. 543; Stoddard v. Kimball, 6 Cush. 469.

<sup>24</sup> Limerick Nat. Bank v. Adams, 70 Vt. 132, 40 Atl. 168; Stalker v. McDonald, (N. Y.) 6 Hill 93, 40 Am. Dec. 389.

<sup>24a</sup> Ochsenreiter v. Block, — S. Dak. —, 173 N. W. 734. See note 6 A. L. R. 458.

<sup>25</sup> Neg. Inst. Law, § 54, where all cases directly or indirectly bearing upon or citing the Law are grouped.



line of demarcation and state what proportion the amount paid must bear to the face of the paper in order to charge the purchaser *prima facie* with notice or raise the presumption of bad faith on his part.<sup>26</sup> But it may be said that the consideration should be so utterly trifling as to bear upon its face the impress of fraud to leave open no reasonable conjecture but that the purchaser must have known, from the very nature of the facts, that they could not have originated from any but a corrupt source. The known solvency of prior parties would of course strengthen the argument of implied notice and bad faith wherever they were alleged. If the amount paid for the paper were not so insignificant as, *per se*, to charge the transferee with notice, it might still be so inadequate as to be a pregnant fact, to be given due consideration in connection with others in determining whether he should be charged with notice or not.<sup>27</sup>

If the amount which the holder offers to take for a negotiable instrument is insignificant as compared to its face value, it might be under the circumstances implied notice that there was something wrong about it; and taken without inquiry, one should not be protected. For it is obvious that a *bona fide* owner would not throw away his property for a trifle, and that the purchaser acted in bad faith when he acquired it for comparatively nothing.

*"To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith."*<sup>28</sup>

Actual knowledge of a defect or infirmity in an instrument on the part of the indorsee, although purchased by him, for value and otherwise in good faith, will destroy the protection which the law affords to a holder in due course. The fact that full value was given for an instrument will not benefit the holder where it appears that he had actual knowledge of the facts which impeach the title thereof or prevent a recovery thereon by him. Knowledge of the agent acting within the scope of his authority is notice to the principal.

Now, there is one principle that is rather confusing in connection with a holder for value without notice, and yet it works

<sup>26</sup> Williams v. Huntington, 68 Me. 590, 13 Atl. 336, 6 Am. St. Rep. 477; Joy v. Diefendorf, 130 N. Y. 6, 28 N. E. 602, 40 N. Y. St. 491, 27 Am. St. Rep. 484; Kitchen v. Loudonbach, 48 Ohio St. 177, 26 N. E. 979, 29 Am. St. Rep. 540.

<sup>27</sup> Smith v. Jansen, 12 Nebr. 125, 10 N. W. 537, 41 Am. Rep. 761; Jordan v. Grover, 99 Cal. 194, 33 Pac. 889; Knowlton v. Schultz, 6 N. D. 417, 71 N. W. 550.

<sup>28</sup> Neg. Inst. Law, § 56, where all cases directly or indirectly bearing upon or citing the Law are grouped.

out justice, and that is this principle: That if A receives an instrument from B and B was a *bona fide* holder for value without notice, even though A has notice when he receives it, if he is a holder for value, he may recover upon the instrument. That is, if B secures the instrument, say for \$50, and there are certain equities against that instrument, as for example, the note has been procured by fraud; B does not have notice of that fraud when he gets that instrument, B having that instrument and being lawfully entitled to it can pass that on to anybody he desires, and if A has notice of the fraud which B did not have notice of, A can recover against those parties who did not have notice. What good would the instrument do B calling for \$50 in his hands? His hands would be tied and he could not dispose of it until he disposed of it to somebody who did not have notice. The principle of the law merchant is that it can pass from hand to hand the same as money does. The law merchant says, "Yes, B can dispose of that instrument to anybody; it does not matter if that person has notice of the fraud; that person who had notice can recover upon the instrument. A *bona fide* holder for value without notice can dispose of the paper to a *bona fide* holder for value who has notice."<sup>29</sup>

It is provided in the Negotiable Instruments Law as follows: "*\* \* \* But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.*"<sup>29a</sup>

The above section of the Law has some slight changes in several of the states. By this section a purchaser from a holder in due course is entitled to recover against the maker, even though he have notice of fraud.<sup>29b</sup>

*"Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course."*<sup>30</sup>

The same is true as to paper which is overdue. An instrument has been received and it is one month overdue. A looks at the instrument and says, "Why, that was due the first of February and this is the first of March; why does the maker of that promissory note refuse to pay it? Why do those indorsers refuse to

<sup>29</sup> *Butterfield v. Town of Ontario*, 82 Fed. 891; *Armstrong v. Am. Ex. Nat. Bank*, 133 U. S. 433, 33 L. Ed. 747; *Fowler v. Strickland*, 107 Mass. 552; *Bodley v. Emporia Nat. Bank*, 38 Kan. 59, 16 Pac. 88.

<sup>29a</sup> Neg. Inst. Law, § 58, where all

cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>29b</sup> *McMurray v. McMurray*, 285 Mo. 405, 167 S. W. 513.

<sup>30</sup> Neg. Inst. Law, § 53, where all cases directly or indirectly bearing upon or citing the Law are grouped.

pay it? Do not misunderstand, because the instrument is overdue, that does not make it void, for if an instrument is all right before it is due, it is all right afterwards. If A receives an instrument payable to himself at maturity, he has a right to transfer that instrument after it is due. If A has good title to it, he can transfer it to anybody at any time. But, if A receives an instrument before it is due and receives it with notice of equities against it, such as fraud, etc., and he has notice of that before maturity, and then after the note becomes due and is not paid X comes along and A offers it to him, and he says, "That instrument is for \$500, is it all right?" and A says, "Yes" —then X gives \$500 for it, he is a *bona fide* holder for value but gets it after maturity. X gets no better title than A had. A had notice and X receiving it after maturity gets it also with notice, because A had notice and A cannot transfer any better title than he had.<sup>31</sup>

After maturity negotiable paper still passes from hand to hand *ad infinitum* until paid. Moreover, the indorser, after maturity, writes in the same form, and is bound only upon the same condition of demand upon the drawer and notice of non-payment, as any other indorser. The paper retains its commercial attributes, and circulates as such in the community; but there is this vital distinction between the rights of a transferee who received the paper before and of one who received it after maturity. The transferee of negotiable paper to whom it is transferred after maturity, acquires nothing but the actual right and title of the transferor.<sup>32</sup> The transferee takes overdue paper subject to all the equities with which it was encumbered in the hands of the party from whom he received it.<sup>33</sup> Thus if he took it from a thief, or finder, or from a bankrupt incapacitated by law to make the transfer, he can not recover on it, inasmuch as the thief, finder, or bankrupt could not.

Bills payable in installments are considered overdue *in toto*,

<sup>31</sup> Greenwell v. Haylan, 78 Ky. 332, 29 Am. Rep. 234; Ayer v. Hutchins, 4 Mass. 370, 3 Am. Dec. 232; Comstock v. Draper, 1 Mich. 481, 53 Am. Dec. 78; Lancaster Bank v. Woodard, 18 Pa. St. 357, 57 Am. Dec. 618. As to rights of holder of instruments transferred after maturity see notes 18 U. S. L. Ed. 931 and 46 L. R. A. 753.

The purchase of paper overdue

merely makes it subject to the equities that may exist against it and does not permit an attack on the purchaser's title. Sanderson v. Crane, 14 N. J. L. 506.

<sup>32</sup> Fowler v. Brenbley, 14 Pet. 318. See note 46 L. R. A. 573.

<sup>33</sup> Speck v. Car Co., 121 Ill. 57, 12 N. E. 213; Church v. Clapp, 47 Mich. 257, 10 N. W. 362; Morgan v. U. S., 113 U. S. 500.

when any installment is past due, but not from the fact that interest is past due.<sup>34</sup>

The position of a holder who takes a bill when overdue is this: He is a holder with notice. He may or may not be a holder for value and his rights will be regulated accordingly. He is a holder with notice for this reason; he takes a bill which, on the face of it, ought to have been paid. He is therefore bound to make two inquiries. 1. Has what ought to have been done really been done, *i. e.*, has the bill in fact been discharged? 2. If not, why not? Is there any equity attaching thereto? *i. e.*, was the title of the person who held it at maturity defective? If his title to the instrument was complete, it is immaterial that for some collateral reason, *e. g.*, set-off, he could not have enforced the bill against some one or more of the parties liable thereon.

The rule that a party taking an overdue bill or note takes it subject to the equities to which the transferrer is subject does not extend so far as to admit set-offs which might be available against the transferrer.<sup>35</sup> A set-off is not an equity, and the general rule stated is qualified and restricted to those equities arising out of the bill or note transaction itself, and the transferee is not subject to a set-off which would be good against the transferrer, arising out of collateral matters.

<sup>34</sup> Vinton v. King, 4 Allen 562;  
Field v. Tibbetts, 57 Me. 358, 99  
Am. Dec. 779; Nat. Bank of Battle  
Creek v. Dean, 86 Ia. 656, 53 N. W.

338.

<sup>35</sup> Robinson v. Lyman, 10 Conn.  
30; Edney v. Willis, 23 Neb. 56, 36  
N. W. 300; Young v. Shriner, 80  
Pa. St. 463.

## CHAPTER XIV.

### REAL OR ABSOLUTE DEFENSES.

- |                                 |                                |
|---------------------------------|--------------------------------|
| § 130. Defenses—In general.     | § 136. Incapacity to contract— |
| 131. Real defenses—In general.  | Drunkenness.                   |
| 132. Incapacity to contract—In- | 137. Illegality of contract—   |
| fancy.                          | Gaming, usurious and Sun-      |
| 133. Incapacity to contract—    | day notes.                     |
| Coverture.                      | 138. Forgery.                  |
| 134. Incapacity to contract—    | 139. Duress when amounting to  |
| Where corporation prohib-       | forgery.                       |
| ited.                           | 140. Statute of limitations.   |
| 135. Incapacity to contract—    | 141. Failure to stamp.         |
| Insanity.                       |                                |

§ 130. **Defenses—In general.** The defenses which may be interposed to an action upon a negotiable instrument may be grouped or arranged into two classes: (1) real or absolute defenses, and (2) personal defenses.

Real or absolute defenses are those which attach to the instrument itself, and are good against all persons, thus they are good against a *bona fide* holder for value. Real defenses, like real actions, are founded upon a right, good against the world. They are called real because they attach to the *res*, *i. e.*, the instrument itself, regardless of the merits or demerits of the plaintiff. So a purchaser for value without notice is powerless against a real defense.<sup>1</sup>

Personal defenses are those which grow out of the agreement or conduct of a particular person in regard to the instrument, which renders it inequitable for him, though holding the legal title, to enforce it against the defendant, but which are not available against *bona fide* purchasers for value, without notice. They are called personal defenses because they are available only against that person or a subsequent holder who stands in privity with him.<sup>2</sup>

The purpose of our consideration of these defenses on negotiable paper is to determine whether or not when an instrument gets into the hands of a *bona fide* holder for value without notice, there is any right which may be set up against him. We might

<sup>1</sup> Ames Cases on Bills and Notes, 811. As to defenses in general, see note 46 L. R. A. 760.

<sup>2</sup> Ames Cases on Bills and Notes, 812.

say, as between the immediate parties, all defenses are real defenses, because as between the immediate parties any defense can be set up just as in an ordinary contract.<sup>3</sup> As between you and A if the instrument has passed from you to A, you have the right to set up any defense you could on any ordinary contract. But it becomes important to know whether they run when it gets into the hands of some third party.

Now, there is another matter which is confusing in these defenses. We see that a real defense is a defense which attaches to the thing itself. Now, we must not confuse the idea that that instrument in the hands of everybody cannot be recovered upon, for the real defense, in many instances, applies only to the person who has made the instrument. As a matter of fact, we may state it as a general rule, that a real defense is a defense which the person against whom you are endeavoring to recover may set up, and that person is usually the person primarily liable upon the instrument.

The *real* defenses are so-called here because they attach to the thing irrespective of the parties to it. The right sought to be enforced has never existed or ceased to exist; it is a real or absolute defense. It is a defense against everybody—against the party who receives it immediately from me, against A, B, C, or D, holders for value—against everybody. Now, those defenses which are absolute are:

1. Want of capacity to make a binding contract.
2. Downright illegality of contract.
3. Forgery—
  - a. Ordinary forgery.
  - b. Fraud when it amounts to forgery.
  - c. Alteration when material and made by a party and not a stranger.
4. The statute of limitations.
5. Fraud or duress when amounting to a forgery.

The personal defenses or those free from which the purchaser for value without notice acquires title are:

1. Alteration.
2. Simple fraud.
3. Duress.
4. Want or failure of consideration.
5. Illegality, unless the contract is declared void by the statute.
6. Payment or renunciation, or release before maturity.

<sup>3</sup> Kulenkamp v. Groff, 71 Mich. 675, 40 N. W. 57; Clark v. Pease, 41 N. H. 414; Voltier v. Zane, 6 Gratt. (Va.) 246; Wright v. Irwin, 33 Mich. 32; Mills v. Barber, 1 Mees. & W. 425.

**§ 131. Real defenses—In general.** As heretofore set out there are five divisions of real or absolute defenses.

The first is "The incapacity of the defendant to make the contract." (1) As infancy,<sup>4</sup> which may be a real defense at the option of the infant, and in some jurisdictions it is a real defense even in case of necessities. (2) As coverture<sup>5</sup>—for example in some jurisdictions today married women are not bound by becoming surety. (3) So *ultra vires*<sup>6</sup> is a real defense; this, however, is an unusual case. It is a real defense to the corporation only. (4) Insanity<sup>7</sup> is a real defense when the party has been adjudged insane. It is a real defense to the insane person only. (5) And last is drunkenness.<sup>8</sup> It is a real defense to the drunkard only.

The second division is downright illegality of contract as "By statute."<sup>9</sup> (1) Where the statute declares the contract void, as a gaming contract in some jurisdictions. This is a real defense to the maker of the instrument, or to one who has made the instrument to pay a gambling debt. (2) Under the statute as when the statute connects a penalty, as notes made on Sunday. It would be a real defense as against anybody; against a *bona fide* holder for value, since he would not be a *bona fide* holder for value, because he would have notice that it was made on Sunday by the date upon it. (3) Under the statute as "usury." Usury is a real defense in some jurisdictions as to the excess over the legal rate and in others as to all the interest and in still other jurisdictions as to both principal and interest.

The third division is "Forgery."<sup>10</sup>

The fourth division is the "Statute of Limitations," which is a real defense at the option of the party who is entitled to set up that statute.

The fifth and last is "Duress,"<sup>11</sup> which is a real defense where it amounts to a forgery.

These will now be considered in their order.

**§ 132. Incapacity to contract—Infancy.** Suppose a note was made by a minor and you endeavor to recover against him and he sets up the defense that he is a minor, that he did not have the capacity to make that contract, and is therefore not liable. It is a defense which the minor can set up against all the world.<sup>12</sup>

<sup>4</sup> *Post*, § 132.

<sup>5</sup> *Post*, § 133.

<sup>6</sup> *Post*, § 134.

<sup>7</sup> *Post*, § 135.

<sup>8</sup> *Post*, § 136.

<sup>9</sup> *Post*, § 137.

<sup>10</sup> *Post*, § 138.

<sup>11</sup> *Post*, § 139.

<sup>12</sup> *Des Moines Ins. Co. v. McIntire*, 89 Ia. 50, 68 N. W. 565; *Howard v. Simpkins*, 70 Ga. 322; *Fitts v. Hall*, 9 N. H. 441; *Conroe v. Birdsall*, 1 Johns. Cas. (N. Y.) 127, 1 Am. Dec. 105.

It is a defense which no one can set up for him but he must set it up for himself.<sup>13</sup> Now, if that instrument passes through the hands of A, B, and C, the succeeding parties can recover from the preceding parties on the instrument, because of these implied warranties which we have considered. If A makes a note payable to B, a minor, A would be estopped from setting up that B could not indorse.<sup>14</sup> And so, the instrument is not void as to everybody, but the minor has a right to set up that the instrument is void as to himself, but the other parties do not have that right.<sup>15</sup> In other words, if the minor indorses an instrument it does not bind him on the indorsement, but at the same time he transfers certain rights; he is not incapacitated to contract and transfer those rights.<sup>16</sup>

The Negotiable Instruments Law provides:

*"The indorsement or assignment of the instrument \* \* \* by an infant passes the property therein, notwithstanding that from want of capacity the \* \* \* infant may incur no liability thereon."*<sup>16a</sup>

As to a note made by a minor for necessities different jurisdictions have different rules. The law in some jurisdictions is that such a note made by a minor is voidable.<sup>17</sup> Of course, if he does not set up the fact that he is a minor he can go ahead and pay it, and the person who receives the money would be entitled to receive it. It is voidable then and not absolutely void. In some other jurisdictions the courts hold that a note made for necessities by a minor is valid and he may be proceeded against the same as an adult.<sup>18</sup>

If a bill of exchange is drawn by an infant, the acceptor cannot set up as a defense that the minor was without legal capacity to draw the bill.<sup>18a</sup>

The Law provides: *"The acceptor by accepting the instrument \* \* \* admits \* \* \* the existence of the payee and his then capacity to indorse."*<sup>18b</sup>

<sup>13</sup> Nightingale v. Withington, 15 Mass. 272, 8 Am. Dec. 101; Hertness v. Thompson, 5 Johns. (N. Y.) 160.

<sup>14</sup> Frazier v. Massey, 14 Ind. 382; Nightingale v. Withington, 15 Mass. 271, 8 Am. Dec. 101.

<sup>15</sup> Hastings v. Dollarhide, 24 Cal. 195; Hardy v. Waters, 38 Me. 450.

<sup>16</sup> Grey v. Cooper, 3 Doug. 54; Taylor v. Croker, 4 Esp. 187; Baker v. Kennett, 54 Mo. 82.

<sup>16a</sup> Neg. Inst. Law, § 22.

<sup>17</sup> Ayers v. Burns, 87 Ind. 245, 44 Am. Rep. 759; Fenton v. White, 4 N. J. L. 115; Swasey v. Vandereyden, 10 Johns. (N. Y.) 33; Price v. Sanders, 60 Ind. 310.

<sup>18</sup> Duboise v. Wheddon, 4 McCord (S. C.) 221; Earle v. Reed, 51 Mass. (10 Metc.) 387; Bradley v. Pratt, 23 Vt. 378; Conn v. Coburn, 7 N. H. 368, 26 Am. Dec. 746.

<sup>18a</sup> Jones v. Darch, 4 Price 300.

<sup>18b</sup> Neg. Inst. Law, § 62.



§ 133. Incapacity to contract—Coverture. A second real defense growing out of the incapacity to contract, particularly at common law, was coverture.<sup>19</sup> A married woman could not make that form of contract known as a negotiable instrument.<sup>20</sup> There is a diversity of the law as to married women's ability to contract today, but a married woman generally has the same capacity, just as if she were a single woman.<sup>21</sup> In some jurisdictions the contract of a married woman as to surety is void and consequently on such a contract she would have a real defense.<sup>22</sup>

§ 134. Incapacity to contract—Where corporation prohibited. If a corporation has power to make a note for any purpose, it cannot, against a *bona fide* holder, set up as a defense that it had no power to make a note for a particular purpose.<sup>23</sup> Where a corporation is prohibited by its charter or by statute from issuing negotiable paper under any circumstances, such paper is absolutely void, even in the hands of a *bona fide* holder for value,<sup>24</sup> since what is absolutely void *ab initio* cannot acquire validity by being transferred to a third person any more than a forged instrument can acquire validity in that way. When a corporation has received the benefit of the proceeds of a bill or note it cannot set up the defense of *ultra vires* in an action on such bill or note.

It is not usual, however, for a corporation to be prohibited by its charter or by statute from issuing negotiable paper under any circumstances, as above stated.

<sup>19</sup> Dollner, Potter & Co. v. Snow, 16 Fla. 86; Cummins v. Leedy, 114 Mo. 454, 21 S. W. 804; Simpson v. Soan, 5 Cal. 457.

<sup>20</sup> Fernando v. Beshoar, 9 Colo. 291, 12 Pac. 196; Lackey v. Boruff, 152 Ind. 371, 53 N. E. 412; Radican v. Radican, 22 R. I. 405, 48 Atl. 143.

<sup>21</sup> Goar v. Moulton, 67 Cal. 536, 8 Pac. 63; Rodenmeyer v. Rodman, 5 Ia. 426; Barrow v. Mittenberger, 21 La. Ann. 396; McVey v. Contrell, 70 N. Y. 295, 26 Am. Rep. 605; Williamson v. Cline, 40 W. Va. 194, 20 S. E. 917.

Note: In order to determine the status of married women reference must be made to the statutes of the several states.

<sup>22</sup> Wiltbank v. Tobler, 181 Pa. St. 103, 37 Atl. 188; Stores & Co. v. Wingate, 67 N. H. 190, 29 Atl.

413; Vliet v. Eastburn, 63 N. J. L. 450, 43 Atl. 741; Voreis v. Mussbaum, 131 Ind. 267, 31 N. E. 70, 16 L. R. A. 45.

The common law rule is not changed except in the particular cases provided by statute. Wilcox v. Arnold, 116 N. C. 708, 21 S. E. 434; Rowe v. Kohle, 4 Cal. 285.

<sup>23</sup> Jacobs v. Southern Banking Co., 97 Ga. 573, 25 S. E. 171; Monument Nat. Bank v. Globe Works, 101 Mass. 57, 36 Am. Rep. 322; Auerbach v. Le Sueur Mill Co., 28 Minn. 291, 9 N. W. 799, 41 Am. Rep. 285; Blunt v. Walker, 11 Wis. 334, 78 Am. Dec. 709.

<sup>24</sup> Scott v. Bankers' Union, 73 Kan. 575, 85 Pac. 604; Chillicothe Bank v. Dodge, 8 Barb. (N. Y.) 233; Root v. Godard, 3 McLean 102, Fed. Cas. No. 12,037.

§ 135. **Incapacity to contract—Insanity.** If the party sued is adjudged insane the obligation is a non-enforceable one.<sup>25</sup> This defense is available not only as between immediate parties, but also as against a *bona fide* holder for value.<sup>26</sup> Some courts hold that negotiable paper executed by an insane person, who has not been adjudged insane is voidable, but not void.<sup>26a</sup>

In some jurisdictions guardians may be appointed by statute for habitual drunkards, spendthrifts and for old persons incapable of transacting business; instruments executed by any such persons who are under guardianship are also non-enforceable.<sup>26b</sup>

§ 136. **Incapacity to contract—Drunkenness.** If a person become so drunk as to be deprived of understanding and reason, there is no doubt that while in such a condition, he has no capacity to enter into a contract and if he should sign a negotiable instrument either as maker, drawer, indorser or acceptor, it would certainly be void as to all parties having notice of the condition in which he signed it.<sup>27</sup> If the drunkenness were so complete as to suspend all rational thought, the better opinion is that any instrument signed by the party would be utterly void even in the hands of a *bona fide* holder without notice, for, although it may have been the party's own fault that such an aberration of mind was produced, when produced it suspends for the time being his capacity to consent, which is the first essential of a contract.<sup>28</sup>

In some jurisdictions as in Wisconsin an amendment to Section 55 of the law makes such an instrument absolutely void. This amendment declares: "The title of such person is absolutely void

<sup>25</sup> Van Patton v. Beals, 46 Ia. 62; Wirebach v. Easton Bank, 97 Pa. St. 543, 39 Am. Rep. 82.

See Carrier v. Sears, 86 Mass. (4 Allen) 336, 81 Am. Dec. 707.

<sup>26</sup> Rice v. Peet, 15 Johns. (N. Y.) 503; Taylor v. Dudley, 5 Dana (Ky.) 308; Moore v. Hershey, 90 Pa. St. 196; Hossler v. Beard, 54 Ohio St. 398, 43 N. E. 1040, 56 Am. St. Rep. 1040, 35 L. R. A. 161.

<sup>26a</sup> McClain v. Davis, 77 Ind. 419.

<sup>26b</sup> Copenrath v. Kienby, 83 Ind. 18.

<sup>27</sup> Burroughs v. Richman, 13 N. J. L. 233, 23 Am. Dec. 717; Stigler v. Anderson, — Miss. —, 12 So. 831; Gore v. Gibson, 13 M. & W. 623.

<sup>28</sup> Caulkins v. Fry, 35 Conn. 170. As against a *bona fide* holder, however, it has been determined in some jurisdictions that intoxication is no defense. The reason underlying this rule is that, when a man has voluntarily put himself in such a condition that a loss must fall on one of two innocent persons it should fall on him who occasioned it. If drunkenness were a defense it would clog and embarrass the circulation of commercial paper. Miller v. Finley, 26 Mich. 248, 12 Am. Rep. 306; McSpencer v. Neeley, 91 Pa. St. 17; Smith v. Williamson, 8 Utah 219, 30 Pac. 753.

when such instrument or signature was so procured from a person who did not know the nature of the instrument and could not have obtained such knowledge by the use of ordinary care." Under this amendment an instrument signed by one when so intoxicated as wholly to destroy the vocational faculties of his mind, is absolutely void; and negligence in getting drunk does not estop him and the signing of an instrument is not a usual or probable result of drunkenness.<sup>28a</sup>

**§ 137. Illegality of contract—Gaming, usurious, Sunday and other illegal instruments.** A second division of real or absolute defenses is illegality of contract, where by force of statute certain contracts are declared to be absolutely void, *e. g.*, gaming notes, usurious notes and Sunday notes.

The Negotiable Instruments Law in some states provides:

*"If the consideration of a promissory note or other negotiable instrument consists in whole or in part of the purchase price of any farm product, at a price greater by at least four times than the fair market value of the same product at the time, in the locality, or of the membership and rights in an association, company or combination to produce or sell any farm product at a fictitious rate, or of a contract or bond to purchase or sell any farm product at a price greater by four times than the market value of the same product at the time in the locality, the words, 'given for a speculative consideration,' or other words clearly showing the nature of the consideration, must be prominently and legibly written or printed on the face of such note or instrument above the signature thereof; and such note or instrument, in the hands of any purchaser or holder, is subject to the same defenses as in the hands of the original owner or holder."*<sup>28b</sup>

The maker, indorser, acceptor, or any party to a gaming instrument has a real defense in his favor in some of those jurisdictions having a statute to the effect that all notes, bills, checks or instruments made hereafter, when the whole or any part of the consideration thereof shall be for money or other valuable thing won on the result of any wager, or for repaying any money lent at the time of such wager for the purpose of being wagered, shall be void.<sup>29</sup>

<sup>28a</sup> *Green v. Gunster*, 154 Wis. 69, 142 N. W. 261.

<sup>28b</sup> *Neg. Inst. Law* (New York), § 331, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>29</sup> *Snoddy v. American Nat. Bk.*, 38 Tenn. 573, 13 S. W. 127, 17 Am.

St. Rep. 918, 7 L. R. A. 705; *Ayer v. Younker*, 10 Colo. App. 27, 50 Pac. 218; *Sondheim v. Gilbert*, 117 Ind. 71, 18 N. E. 687, 10 Am. St. Rep. 23, 5 L. R. A. 432; *Chapin v. Duke*, 57 Ill. 295, 11 Am. Rep. 15. See note 18 U. S. L. Ed. 423.

There is much conflict of authority as to whether illegality ceases to be a real defense under the Negotiable Instruments Law unless made so by a subsequent statute and whether the statutes previously in force declaring void instruments given for gaming or upon usurious interest or other forbidden transactions are impliedly repealed by the Negotiable Instruments Law.

These divergent views arise from the fact that some jurisdictions maintain that the requirements of commerce should be the controlling consideration in deciding the rule of law while others maintain that the controlling consideration should be the protection of the weak and ignorant and the good morals of the matter. This question is not specifically covered by the Negotiable Instruments Law, except in the states of Illinois and Wisconsin; in those states it is expressly referred to and covered in their enactment and the defense of gaming is made a real defense. The conflict in other jurisdictions is one between morals and commerce; morals, which says that good morals should permit no recovery on gaming instruments even when in the hands of a *bona fide* holder, and commerce, which says for the advantage of trade and commerce the *bona fide* holder should be protected and he should be entitled to recovery on such an instrument. The weight of authority varies from time to time but is usually in favor of the commerce side of the question. On behalf of morals it is urged that gaming is against the best interests of society and contrary to public policy, and statutes against it should be construed to preclude its practice; it is urged that no legislative enactment should be construed to have been repealed unless a subsequent act so states expressly, or unless the implication is so necessary as to be unescapable, and that statutes should be repealed by implication with great reluctance. And a number of jurisdictions decide this question on the side of morals.<sup>20a</sup> In one jurisdiction the court states: "However, this act (Negotiable Instruments Law) applies only to paper that might have been obligatory between the parties—that which it was legally possible for the parties to make. Where the parties were never bound because the law made the note void, as being contrary to public policy as expressed in the statutes, the Negotiable Instruments Act does not have any application. That this act was not intended to inject life into a written instrument that was by law null and void, *ab*

<sup>20a</sup> Alexander v. Hazelrigg, 123 Ky. 677, 97 S. W. 353; Martin v. Hess, 27 Pa. Dist. Ct. 195; Holzbog v. Bakrow, 156 Ky. 161, 50 L. R. A. (N. S.) 1023; Levy v. Fidelity & C. Trust Co. or Doerhofer, 188 Ky. 413, 222 S. W. 515, 11 A. L. R. 207; Raleigh County Bank v. Toteet, 74 W. Va. 511, 88 S. E. 187; Twentieth Street Bank v. Jacobs, 74 W. Va. 528, 82 S. E. 320. Note 8 A. L. R. 314.

*initio*, is apparent from the use of the word 'liable' in Section 57 of this act. The liability is defined to be the situation of one who is bound in law and justice to do something which may be enforced by action."

"The maker of a note given in payment of a gambling transaction is not liable on such instrument, as by law such instrument is null and void and of no effect. It is questionable whether such a note ever becomes a negotiable instrument."<sup>29a</sup>

The other class of cases proceeds on the theory that the requirements of commerce should be the controlling consideration, holding an instrument given as the result of a wager is not void under a statute in force before the adoption of the Negotiable Instruments Law. It is urged that the great object sought to be accomplished by the uniform law was to free the negotiable instrument as far as possible from all latent or local infirmities which otherwise would inhere in it to the prejudice and disappointment of innocent holders as against all the parties to the instrument professedly bound thereby. It is urged that this clearly could not be affected so long as the instrument was rendered absolutely null and void by local statute as against the original maker or acceptor.<sup>29b</sup> In furtherance of this theory it is said the business of the country is done so largely by means of commercial paper that the interests of commerce require that a negotiable instrument fair on its face should be as negotiable as a government bond; that every restriction upon the circulation of negotiable paper is an injury to the state; for it tends to derange trade and hinder the transaction of business and if such instruments are void in the hands of the holder for value, then not merely is that instrument affected but a doubt is cast upon all commercial paper originating in that community.<sup>29c</sup>

It has been decided, however, that one may estop himself from setting up a defense of a gaming consideration under certain circumstances even in a jurisdiction holding the instrument as ordinarily void in the hands of a *bona fide* holder.<sup>29d</sup>

Usury in some jurisdictions is a real defense by statute.<sup>30</sup>

<sup>29a</sup> Martin v. Hess, 27 Pa. Dist. Ct. 195.

<sup>29b</sup> Wirt v. Stubbelfield, 17 App. Cas. D. C. 283; Wood v. Babbitt, 149 Fed. 818, 822.

<sup>29c</sup> Chemical National Bank v. Kellogg, 183 N. Y. 92, 75 N. E. 1103, 2 L. R. A. (N. S.) 299, 111 Am. St. Rep. 717.

<sup>29d</sup> Holzbog v. Bakrow, supra. Kyser v. Miller, 144 Ill. App. 316;

Montreal Bank v. Griffin, 154 Ill. App. 616; Pritchett v. Ahrens, 26 Ind. App. 56.

<sup>30</sup> Pearson v. Bailey, 23 Ala. 537; Bridge v. Hubbard, 15 Mass. 96, 8 Am. Dec. 86; Solomons v. Jones, 3 Brev. (S. C.) 54, 5 Am. Dec. 538; Hamilton v. Fowler, 99 Fed. 18.

In the absence of a statutory provision the better doctrine is that usury is not a defense which

Usury is defined as an unlawful contract upon the loan of money, to receive the same again with exorbitant increase. In other words it is the reserving and taking, or contracting to reserve and take, either directly or by indirection, a greater sum for the use of money than the lawful interest.<sup>31</sup>

In some jurisdictions a purchaser for value without notice cannot recover the sum called for by the instrument from persons who were parties to the instrument at its inception, when the instrument was negotiated in its inception at a rate greater than the legal rate of interest.

Interest in advance is not usury,<sup>32</sup> nor does a sale of notes at a discount, in good faith, render the contract usurious.<sup>33</sup> In addition to the legal rate of interest lenders of money may take a reasonable compensation for trouble and expense.<sup>34</sup> And as a general rule compound interest is not allowed,<sup>35</sup> but after simple interest is due, it may by contract be allowed in consideration of giving time for payment. By the weight of modern authority, it is held that when a promissory note is given with a stipulation that the interest is to be paid annually or semi-annually, the payee or holder is entitled to interest upon the interest if it is not paid according to the tenor of the instrument.<sup>36</sup> In some states it is held that interest may be allowed on interest, if the promise to pay it is made after the interest matures, but not if the promise was made before the maturity of the interest.<sup>37</sup> In other states interest is allowed on such interest from the time it becomes payable, without any subsequent demand by the creditor, or agreement by the debtor, that it shall be paid, giving time for payment.

is available against a *bona fide* holder although there is much conflict on this point. *Cheney v. Janssen*, 20 Neb. 128, 29 N. W. 289; *Robinson v. Smith*, 62 Minn. 62, 64 N. W. 90; *Tilden v. Blair*, 21 Wall. (U. S.) 241.

<sup>31</sup> *Brundage v. Burke*, 11 Wash. 679, 40 Pac. 343; *Wilkie v. Roosevelt*, 3 Johns. (N. Y.) 206, 2 Am. Dec. 149; *Newton v. Wilson*, 31 Ark. 484. As to effect of usury in renewal note on original, see note 18 U. S. L. Ed. 305.

<sup>32</sup> *Bank of Newport v. Cook*, 60 Ark. 288, 30 S. W. 35, 29 L. R. A. 761; *Scott v. Safford*, 37 Ga. 384; *English v. Smock*, 34 Ind. 115.

But see *Lerner v. Cox*, 65 Ga.

265; *Hiller v. Ellis*, 72 Miss. 701, 18 So. Rep. 95.

<sup>33</sup> *Beals v. Benjamin*, 33 N. Y. 61; *Borrows v. Cook*, 17 Ia. 436; *Geurren v. Cullen*, 20 Gratt. 439.

<sup>34</sup> *Beadle v. Munson*, 30 Conn. 175; *McGill v. Ware*, 5 Ill. 21; *Brummel v. Enders*, 18 Gratt. 873.

<sup>35</sup> *Ex parte Bevan*, 9 Ves. 223; *Perkins v. Coleman*, 51 Miss. 298.

<sup>36</sup> *Preston v. Walker*, 26 Ia. 205, 96 Am. Dec. 140; *Mathews v. Toogood*, 23 Neb. 536, 37 N. W. 265, 8 A. S. R. 131.

<sup>37</sup> *Wheaton v. Pike*, 9 R. I. 132, 98 Am. Dec. 377, 11 Am. Rep. 227; *Enkridge v. Thomas*, 79 W. Va. 322, 91 S. E. 7 L. R. A. 1918C p. 769; *Sabine v. Paine*, 223 N. Y. 401, 119 N. E. 849, 5 A. L. R. 1444.

There is the same conflict of opinion in the courts of the different states as to the effect the adoption of the Negotiable Instruments Law has upon usury statutes as it has upon gambling statutes discussed above.

Some jurisdictions maintain that such instruments remain void as usurious as against a *bona fide* holder upon the adoption of the Negotiable Instruments Law when the state statute made a usurious contract void. In many courts usury and gaming are placed exactly upon the same footing, the courts frequently say that gambling and usury, the two most common objects of statutory inhibition, are against the best interests of society and contrary to public policy, and statutes against them should be construed to preclude their practice; and no legislative enactment should be construed to have been repealed unless a subsequent act so states expressly or unless the implication is so necessary as to be unescapable, and statutes should be repealed by implication with great reluctance.

In some other jurisdictions it is urged that for the benefit of trade and commerce negotiable instruments under such circumstances should not be void for usury as against a *bona fide* holder for value.<sup>37a</sup>

And where the statute as to usury does not expressly make the usurious contract void, but where it is construed by the court to have this effect, such an instrument is void.<sup>37b</sup>

In some jurisdictions negotiable instruments made on Sunday are void by statute. In such case it may be set up as a real defense.<sup>37c</sup> The reason is that it is a violation of statutes for the observance of Sunday to execute contracts on that day, and one who has himself participated in a violation of law cannot be permitted to assert any right founded on an illegal transaction. If the negotiable instrument is delivered not on Sunday but on another day, it will not be invalid because it was agreed to and signed on Sunday.

And it may be stated as a general rule that whenever a statute expressly declares a consideration void the holder may have a real defense set up against him.

A *bona fide* holder is entitled to recover on negotiable paper given in payment of a subscription to corporate stock in violation of law where the statute does not expressly make the note void.<sup>37d</sup>

<sup>37a</sup> See Appendix A, Table I for the law as to the penalty for usury in the various jurisdictions.

<sup>37b</sup> *Perry Savings Bank v. Fitzgerald*, 167 Iowa, 446, 149 N. W. 497.

<sup>37c</sup> *Reeves v. Butcher*, 3 N. J. L. 224; *Wadsworth v. Dunnam*, 117 Ala. 661, 23 So. 699.

<sup>37d</sup> *Washer v. Smyer* — Tex. —, 211 S. W. 985, 4 A. L. R. 1320, note 1 A. L. R. 1330; *Heard v. National*

Where the instrument has been executed to a foreign corporation within a state where it has not become authorized to do business in accordance with the statutory requirements, and where such corporation has transferred the instrument to the plaintiff, who sues as a holder in due course, the general rule is that the plaintiff can recover unless the particular statute makes the note and contract void.<sup>37\*</sup>

**§ 138. Forgery.** By forgery is meant the counterfeit making or fraudulent alteration of any writing, and may consist in the signing of another's name, or the alteration of an instrument in the name, amount, description of the person and the like, with intent thereby to defraud. The intent to defraud distinguishes forgery from innocent alterations and spoliation.<sup>38</sup> A forgery or fraudulent alteration will avoid the instrument and also extinguish the debt which represents the consideration of the instrument.

The Negotiable Instruments Law provides:<sup>39</sup>

*"Where a signature is forged or made without authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority."*

It does not follow from the provisions of this section that proof of one forged signature on an instrument must of necessity, and in all cases, be given effect to avoid the note in favor of those whose signature thereto are found to be genuine, it is the forged or unauthorized signature that is declared to be inoperative.<sup>39a</sup>

The last clause of the section of the Law above refers to estoppel and not to ratification. A forger does not act on behalf

Bank, 143 Ga. 48, 84 S. E. 129; Cornell v. Hichens, 11 Wis. 368.

<sup>37\*</sup> Bank v. Utterbach, L. R. A. 1918 B, 838; McMann v. Walker, 31 Colo. 26, 72 P. 1055; Ensign v. Christiansen, — N. H. — 109 A. 857.

<sup>38</sup> Commonwealth v. Wilson, 89 Ky. 157, 12 S. W. 264, 25 Am. St. Rep. 528; Franklin Fire Ins. Co. v. Bradford, 201 Pa. 32, 50 Atl. 286,

55 L. R. A. 408, 88 Am. St. Rep. 770.

<sup>39</sup> Neg. Ins. Law, § 23, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to payment of forged bill by drawee or acceptor, see note 6 U. S. L. Ed. 335. As to liability of person whose signature is forged, see note 36 L. R. A. 539.

<sup>39a</sup> Beam v. Ferrell, 135 Iowa 670, 113 N. W. 509,



of, nor profess to represent the person whose handwriting he counterfeits; and the subsequent adoption of the instrument cannot supply the authority which the forger did not profess to have.<sup>39</sup>

Parties may be estopped, however, to dispute the genuineness of their signatures.<sup>39</sup>

An acceptor or an indorser may be precluded from setting up the forgery or want of authority as to the drawer or maker.

It should be remembered that the drawee by accepting a bill, warrants the genuineness of the drawer's signature, and the indorsers likewise guarantee the genuineness of all parties to the bill at the time of the indorsement.<sup>40</sup>

Since an acceptor of a bill warrants the genuineness of the signature of the drawer he cannot therefore resist payment of the bill as against a *bona fide* holder if the drawer's name be forged.<sup>41</sup> An indorser of a negotiable instrument admits that, at the time of his indorsement the instrument was valid and subsisting, and he is, therefore, bound by his indorsement to subsequent parties.<sup>42</sup> And it has been held that a bank is entitled to recover against the second indorser of a note, although the indorsement of the name of the payee is a forgery, and although the note was offered for discount by the maker and not by the second indorser.<sup>43</sup> The warranty of the acceptor only extends to the genuineness of the signature, and not to the matters contained in the bill itself. An indorser, by his indorsement, contracts with the subsequent *bona fide* holder of the instrument, that the instrument itself, and all the signatures prior to his indorsement, are genuine; and the fact that the name of the maker was forged will not affect his liability.<sup>44</sup>

§ 139. **Duress when amounting to forgery.** When duress amounts to a forgery it is held in some jurisdictions to be a real defense. Thus when the signature of a person is obtained to

<sup>39</sup> Henry Christian Building and Loan Association v. Walton, 181 Pa. St. 201.

<sup>39</sup> Crout v. DeWolf, 1 R. I. 393; Leather Manufacturers' Nat. Bank v. Morgan, 117 U. S. 96.

<sup>40</sup> Olivier v. Audry, 7 La. 496; Rambo v. Metz, 5 Strob. (S. C.) 108.

<sup>41</sup> Hoffman & Co. v. Bank of Milwaukee, 12 Wall. 181, 20 L. Ed. 366; Price v. Neal, 3 Bun. 1354; Redington v. Woods, 45 Cal. 406, 13 Am. Rep. 19.

<sup>42</sup> Cochran v. Atchinson, 27 Kan. 728; Beattie v. Nat. Bank, 174 Ill. 571, 66 Am. St. Rep. 318, 43 L. R. A. 654.

<sup>43</sup> State Bank v. Feaning, 16 Pick. 533, 28 Am. Dec. 265.

<sup>44</sup> Olivier v. Audry, 7 La. 496. As to effect of forgery of part of signatures as defense against *bona fide* holder by makers whose signatures were genuine, see note 13 L. R. A. (N. S.) 426.

an instrument under such circumstances as make the instrument a forgery, the person signing the same will not be liable thereon to any one.<sup>46</sup>

And so duress might be a real defense in every jurisdiction, as where A takes B's hand and forces him to sign his name. In such case the duress amounts to a forgery and is a real defense.

§ 140. **Statute of limitations.** The statute of limitations is a real defense. Holders of negotiable instruments do not necessarily have notice whether the period of limitation has run out or not. The instrument may not be dated, or, what is usual, an indorsement may not be dated; but the real date of the act, or rather of the delivery following it, may be shown, when there is nothing, such as subsequent payments of interest or installments, to prevent the running of the statute from that time.<sup>46</sup>

§ 141. **Failure to stamp.**<sup>46a</sup> Failure to put a revenue stamp on an instrument has been held in some jurisdictions under some of the stamp laws to be a real defense, while in others not to be a real defense.<sup>47</sup>

In construing the Federal Stamp Tax Law of 1898, the provision declaring an unstamped instrument invalid was held to apply only to instruments from which the stamp had been omitted fraudulently;<sup>47a</sup> and it has been held that the purchaser is not precluded from becoming a *bona fide* holder when there is no intent to defraud the Government.<sup>48</sup>

The present law, that is, the Act of October 22, 1914, contains no provision to the effect that an unstamped instrument shall be void.<sup>49</sup>

Some jurisdictions hold that a promissory note which is not stamped as required by the revenue laws is not complete and regular on its face and the purchaser of such a note is not a holder in due course, and the instrument in his hands is open to any defense that the maker had against the original payee.<sup>50</sup> Under such circumstances the omission of the stamp is relied upon not

<sup>46</sup> Mitchell v. Tomlinson, 91 Ind. 167; Webb v. Corbin, 78 Ind. 403; Cline v. Guthrie, 42 Ind. 227.

See also Hatch v. Barrett, 34 Kan. 223; Loomis v. Rush, 56 N. Y. 462.

<sup>46</sup> As to their application, see statutes of the various states.

<sup>46a</sup> See also § 57 of this book.

<sup>47</sup> Robinson v. Fair, 31 Ia. 9; Anderson v. Starkweather, 24 Ia.

409; Green v. Davies, 4 B. & C. 233; Ebert v. Gitt, 95 Md. 186, 52 Atl. 900.

<sup>47a</sup> Rowe v. Bowlan, 183 Mass. 488, 67 N. E. 636.

<sup>48</sup> Ebert v. Gitt 95 Md. 186, 52A. 900.

<sup>49</sup> Cole v. Ralph, 252 U. S. 286.

<sup>50</sup> Lutton v. Baker, — Iowa —, 174 N. W. 599.

as a ground of defense to the note, but as defeating the *bona fides* of the purchaser and thus letting in an independent defense.<sup>51</sup>

Other jurisdictions hold that the want of a revenue stamp on a promissory note is not such a circumstance of suspicion as to put an endorsee upon inquiry in taking the note, and the note is valid and can be enforced without a stamp.<sup>52</sup>

The cancellation of the revenue stamp by one other than the maker whose initials were used is not a suspicious circumstance so as to be notice of any equity and prevent the holder from being a *bona fide* holder.<sup>53</sup>

Many of the state courts held that the provisions of the Acts of 1864, 1865 and 1866, excluding unstamped instruments from evidence, did not apply to the said courts; some denied the power of Congress to prescribe a rule of evidence for the state courts.<sup>54</sup>

<sup>51</sup> Note 6 A. L. R. 1701 and cases.

<sup>52</sup> *Burson v. Huntington*, 21 Mich. 415, 4 Am. Rep. 497.

<sup>53</sup> *Martindale v. Stotler*, 80 Kans. 87, 101 P. 629.

<sup>54</sup> *Wallace v. Cavens*, 34 Ind. 354. See 48 L. R. A. 305 and note pp. 305-320.

## CHAPTER XV.

### PERSONAL DEFENSES OR EQUITIES.

§ 142. In general.

143. Fraud.

144. Alteration.

145. Duress.

§ 146. Want or defect of consideration.

147. Illegality of consideration.

148. Payment.

§ 142. **Personal defenses or equities—In general.** The real defenses are such, that the party who has a right to set them up, can set them up against anybody. Every other person does not necessarily have a real defense because the party originally liable does. The real defense is one which the person alone who has it may set up. So, when we say that a real defense is an absolute defense so far as the person who is entitled to the defense is concerned, we do not necessarily mean that that extends to the other parties. A personal defense is of an equitable nature. It is a defense which depends upon circumstances, it is a defense which a person has a right to set up under certain circumstances, and those circumstances are dependent upon whether or not he had notice and whether or not he was a purchaser for value. In the real defense, it is not a matter as to whether the person is a purchaser for value and had notice, and the like, the defense may be set up regardless of these facts; but a personal defense cannot be set up that way since as to such a defense a person must show that he has not had notice and that he is a purchaser for value.

As to equities or personal defenses it is important to know who are to be regarded as the immediate parties, or parties between whom there is a privity, to a negotiable instrument, and who are remote. Among the former may be classed: (1) The drawer and acceptor of a bill;<sup>1</sup> or (2) the drawer and payee of a bill as a general rule;<sup>2</sup> (3) the maker and payee of a note;<sup>3</sup> and (4) the indorser and immediate indorsee<sup>4</sup> of a bill or note.

That the bill or note has been lost or stolen<sup>5</sup> or was executed

<sup>1</sup> Thomas v. Thomas, 7 Wis. 476.

<sup>2</sup> McCulloch v. Hoffman, 10 Hun (N. Y.) 133.

<sup>3</sup> Kennedy v. Goodman, 14 Neb. 585, 16 N. W. 834; Jeffries v. Austin, 1 Strange 674.

<sup>4</sup> Klein v. Keyes, 17 Mo. 326; Holliday v. Atkinson, 5 Barn. & C. 501.

<sup>5</sup> Mills v. Berger, 1 Mees. & W. 425.

under duress, or under fraudulent misrepresentations, or for fraudulent consideration,<sup>7</sup> or for illegal consideration,<sup>8</sup> or has been fraudulently obtained from an intermediate holder,<sup>9</sup> or been in any way the subject of fraud or felony, or has been misappropriated and diverted, or for a loss for which the party was not liable, or that otherwise it was without valuable consideration, is a good defense as between the parties privy to it. And in some cases it is a good defense that it was given by mistake for too great a sum, or when no sum was due, the evidence showing fraud or a total or partial want of consideration. As between the immediate parties on a bill or note no question arises whether the defense is real or personal. Any defense is valid as between immediate parties if it would be valid on an ordinary contract. But when the parties are not immediate, then the question arises as to whether it is a real or a personal defense. Personal defenses being in the nature of equities, two principles of equity apply to them. (1) One is, he who comes into equity must come with clean hands; he must not be a party to any fraud, to any illegality. If he has notice<sup>10</sup> of any of these, he does not have clean hands. (2) The other is, of two innocent parties, he whose act or omission has caused the loss, must stand it. Equity says, as between two innocent parties, the one should suffer whose act or omission has caused the loss.<sup>11</sup> If a person has no notice and he is the party who has made this loss possible there can be a recovery against him.

The rule is the person who enables the fraud to be perpetrated must stand responsible<sup>12</sup> where the instrument is gotten possession of in such a manner as to amount to a forgery, it should be a real defense and no recovery should be permitted against it. Here, however, we find a conflict of authority. The better opinion is that if you can show that it amounted to a forgery or was obtained by duress, there can be no recovery against you if you are the person liable on the instrument.

<sup>6</sup> Clark v. Pease, 41 N. H. 414.

<sup>7</sup> Wilson v. Ellsworth, 25 Neb. 246, 41 N. W. 177; Macomb v. Wilkinson, 83 Mich. 486, 47 N. W. 336.

<sup>8</sup> Cummins v. Boyd, 83 Pa. St. 372; Bierce v. Stocking, 11 Gray (Mass.) 174.

<sup>9</sup> Rodgers v. Morton, 12 Wend. 484; Vither v. Zane, 6 Gratt. (Va) 246.

<sup>10</sup> Mass. Nat. Bank v. Snow, 187 Mass. 159; Cheever v. The Pittsburg etc. R. R. Co., 150 N. Y. 59, 55 Am. St. Rep. 646, 34 L. R. A. 69.

<sup>11</sup> Ledwich v. McKim, 53 N. Y. 307.

<sup>12</sup> Putnam v. Sullivan, 4 Mass. 45, 3 Am. Dec. 206; McCormick v. Holmes, 41 Kan. 265, 21 Pac. 108.

The Negotiable Instruments Law provides:

*"The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud."*<sup>13</sup>

§ 143. **Fraud.** Where the consideration for a bill is clearly fraudulent it is a good defense against an immediate party<sup>14</sup> or a remote party unless he is an innocent holder for value,<sup>15</sup> and while the instrument is yet in the hands of a party with notice a court of law will compel its surrender, or restrain its negotiation until the question of fraud is settled.<sup>16</sup>

A bill is affected with fraud when the issue or any subsequent negotiation of it is obtained by fraud, coercion, or when it is negotiated in breach of faith, or in fraud of third parties.

No holder of a bill subsequent to its being affected with fraud can enforce payment from any party thereto, or retain the bill against the rightful owner unless he received it from a *bona fide* holder for value without notice. The question of fraud is largely one of negligence. Did a person who has signed the instrument and let it get into the hands of other parties, or into circulation, act with negligence? If he did not, then fraud is a real defense, but if he did so act, it is a personal defense.<sup>17</sup> Where a person, in case of fraud, signs an instrument believing he is signing a different instrument, if he was negligent he cannot set up the personal defense. Then, in case of delivery through fraud, where an instrument has been delivered to an agent or an agent has fraudulently delivered it to someone else, fraud is not a personal defense, because the agent was entrusted with it.<sup>18</sup> As to a custodian the general law applies the same.<sup>19</sup> The maker

<sup>13</sup> Neg. Inst. Law. 55, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>14</sup> *Carthers v. Levy*, 111 Ga. 740, 36 S. E. 958; *Alabama Nat. Bank v. Halsey*, 109 Ala. 196, 19 So. 522; *Still v. Snow*, 66 Vt. 277, 29 Atl. 250.

<sup>15</sup> *Russ Lumber Co. v. Muscupi-able Land & W. Co.*, 120 Cal. 521, 52 Pac. 993; *Nichols v. Baker*, 75 Me. 334; *Hawley v. Hirsch*, 2 Woodw. Dec. (Pa.) 158. *Bona fide* holder takes instrument unaffected

by fraud in its origin, see note 11 Am. St. Rep. 309.

<sup>16</sup> *Hullhorst v. Schamer*, 15 Neb. 57, 17 N. W. 259; *Hodson v. Eugene Glass Co.*, 156 Ill. 397, 40 N. E. 971; *Sackett v. Hillhouse*, 5 Day 551; *Wilcox v. Ryols*, 110 Ga. 287, 34 S. E. 575.

<sup>17</sup> *Gardner v. Wiley (Ore.)*, 79 Pac. 341; *Howry v. Eppinger*, 34 Mich. 29.

<sup>18</sup> *Hutchinson v. Brown*, 19 Dist. Col. 136; *Jordan v. Jordan*, 10 Lea (Tenn.) 124, 43 Am. Rep. 294.

<sup>19</sup> *Walker v. Ebert*, 29 Wis. 194;

of the instrument would not be entitled to set up the fraud; and, where the instrument has been stolen or wrongfully taken, then the question becomes largely a question of negligence. If the party has been negligent, then he has no right to set up fraud as a personal defense. If he has not been negligent, then other circumstances not being considered, he could not be recovered against.<sup>19a</sup>

§ 144. Alteration.<sup>19b</sup> The following is the provision in the Negotiable Instruments Law:

*"Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor."*<sup>20</sup>

A material alteration is defined to be any change in the instrument which affects or changes the liability of the parties in any way.<sup>21</sup> The alteration avoids the paper regardless of whether it is favorable or unfavorable to the party making the alteration.<sup>22</sup> The following have been held to be material alterations: any change in the date of the instrument, but not in the date of the indorsement;<sup>23</sup> any alteration in the amount of principal or interest;<sup>24</sup> any change in the character of the payment, whether in the denomination or medium of payment;<sup>25</sup> any alteration in the personality, number and relations of the parties;<sup>26</sup> any change in the liability of the parties;<sup>27</sup> or any change in the place of payment.<sup>28</sup>

Baldwin v. Bricker, 86 Ind. 222;  
Bedell v. Herring, 77 Cal. 572.

<sup>19a</sup> As to title of *bona fide* holder to stolen paper, see note 103 Am. St. Rep. 983, 987.

<sup>19b</sup> See also section 188 infra.

<sup>20</sup> Neg. Inst. Law, § 124, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>21</sup> Foxworthy v. Colby, 64 Neb. 216, 89 N. W. 800, 62 L. R. A. 393; Organ v. Allison, 68 Tenn. (9 Baxt.) 459.

<sup>22</sup> Franklin Ins. Co. v. Courtney, 60 Ind. 134; Mersman v. Werges, 112 U. S. 139, 28 L. Ed. 641.

<sup>23</sup> Wood v. Steele, 6 Wall, 8;

Griffith v. Cox, 1 Tenn. 210; Mersman v. Werges, 112 U. S. 139, 28 L. Ed. 641.

<sup>24</sup> Harsh v. Klepper, 28 Ohio St. 200; Draper v. Wood, 112 Mass. 315; Batchelder v. White, 80 Va. 103; Neff v. Horner, 63 Pa. 327, 3 Am. Rep. 555.

<sup>25</sup> Foxworthy v. Colby, 64 Neb. 216, 89 N. W. 800, 62 L. R. A. 393; Schwalen v. McIntyre, 17 Wis. 232.

<sup>26</sup> Lamb v. Paine, 46 Ia. 551; Sneed v. Sabinal Min. & Mill. Co., 71 Fed. 493, 18 C. C. A. 213.

<sup>27</sup> Blake v. Coleman, 22 Wis. 415.

<sup>28</sup> Codes & St. Or. 1901, § 4527; Rev. Codes, N. D., § 1053.

The addition of the name of a witness to an instrument required by law to be witnessed is a material alteration, but if the instrument need not be witnessed or if it already has on it the number of witnesses required by law, the alteration is immaterial. An innocent alteration, when material, is held by some authorities to avoid the instrument while not cancelling the debt, others holding that so long as the alteration has caused no injury a court of equity may restore it to its original condition so that suit may be brought on it.<sup>20</sup>

The last proposition as set out in Section 124 of the Law above that a holder in due course may recover according to the original tenor of the instrument changes the law in some jurisdictions.<sup>20a</sup>

What constitutes a material alteration under the Negotiable Instruments Law is set out in Section 125 of that law as follows:

*"Any alteration which changes the date; the sum payable, either of principal or interest; the time or place of payment; the number or the relations of the parties; the medium or currency or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration."*<sup>20b</sup>

When the change in the bill or note is made by a stranger it is called a spoliation instead of an alteration. Such a change of an instrument is held in most jurisdictions to have no effect upon it, if the original meaning can be ascertained. That is, if the alteration be made by a stranger to the instrument the rights of the parties are not affected.<sup>20</sup>

Immaterial alterations are those which do not change the legal effect of the instrument, as adding words implied by law, making marginal figures to correspond to the written statement in the body of the instrument, the adding of immaterial memoranda, and the like.<sup>21</sup> Thus the correcting of a mistake to conform to the intention of the parties is an immaterial alteration.<sup>22</sup>

In those jurisdictions the effect of a material alteration is generally as follows: *Bona fide* holders are only protected

<sup>20</sup> Booth v. Powers, 56 N. Y. 31; Kountz v. Kennedy, 63 Pa. St. 187.

*Contra*, Bigelow v. Stephens, 35 Vt. 525.

<sup>20a</sup> Tower v. Stanley, 220 Mass. 429.

<sup>20b</sup> Neg. Inst. Law, § 125, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>20</sup> Buckler v. Huff, 53 Ind. 474.

Langenberger v. Kroeger, 48 Calif. 147. See note 18 U. S. L. Ed. 725.

<sup>21</sup> Smith v. Smith, 1 R. I. 398; Bachelder v. Priest, 12 Pick. 399; Keene, Adm. v. Miller, 103 Ky. 628, 45 S. W. 1041. As to immaterial alterations, see note 12 U. S. L. Ed. 443.

<sup>22</sup> Bank v. Bank, 13 N. Y. 309; Shepard v. Whetstone, 51 Ia. 457, 1 N. W. 753, 33 Am. Rep. 143.



against material alterations discharging the party liable, when some carelessness or negligence on the part of the person whose liability has been changed by the alteration, has contributed to the negotiation of the paper without suspicion of fraud, as where blank spaces have been left,<sup>33</sup> or it is written partly in pencil so as to be easily erased; so a memorandum which can be detached without affecting the paper will, when detached in fraud, not be allowed to avoid the paper in the hands of a *bona fide* holder.<sup>34</sup>

In those jurisdictions the effect of a material alteration by the holder of a bill is to discharge all parties from liability on the bill, unless they consented to such alteration.<sup>35</sup>

**§ 145. Duress.** Duress, under most circumstances, is considered a personal defense.<sup>36</sup>

It is provided in the Negotiable Instruments Law that duress is a defense. The Law states: "*The title of a person who negotiates an instrument is defective within the meaning of this act when he obtains the instrument, or any signature thereto by duress, or force and fear, or other unlawful means. \* \* \**"<sup>36a</sup>

Threats which induced the execution of a note by old and feeble persons amount to duress, even though they would not influence ordinary persons,<sup>36b</sup> and where the maker of a note is prevented from exercising his free will by reason of payee's threats, the maker may repudiate the note for duress whether the threat be sufficient or insufficient to overcome the mind of a man of ordinary courage, and in such cases evidence as to the maker's mental or physical health, his condition in life, his experience, education and intelligence is admissible.<sup>36c</sup>

Where upon the threatened insolvency of a firm, two of the creditors and their attorney went to the home of the aged parents of one of the members of the firm, and by indirect threats to

<sup>33</sup> Stratton v. Stone, 15 Colo. App. 237, 61 Pac. 481; Rainbolt v. Eddy, 34 Ia. 440, 11 Am. Rep. 152; Cannon v. Grigsby, 116 Ill. 151, 5 N. E. 362, 56 Am. Rep. 769; Isnard v. Tones, 10 La. Ann. 103; Zimmerman v. Rate, 75 Pa. St. 188; Harvey v. Smith, 55. Ill. 224.

<sup>34</sup> Noll v. Smith, 64 Ind. 511.

<sup>35</sup> Burrows v. Klunk, 70 Md. 451, 17 Atl. 378, 14 Am. St. Rep. 371, 3 L. R. A. 576; Mills v. Wilson, 3 Ore. 308; Bank v. Lockwood, 13 W. Va. 392. As to authorized alterations, see note 12 U. S. L. Ed.

443. As to fraudulent alterations, see note 13 U. S. L. Ed. 266.

<sup>36</sup> Hogan v. Moore, 48 Ga. 156; Mumly v. Whitmore, 15 Neb. 647, 19 N. W. 694; Clarke v. Pease, 41 N. H. 414.

<sup>36a</sup> Neg. Inst. Law, § 55, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>36b</sup> Anthony v. Brown, 214 Mass. 439, 101 N. E. 1056.

<sup>36c</sup> Cornwall v. Anderson, 85 Wash. 378, 148 Pac. 1.

prosecute their son, induced them to sign a note for his indebtedness, such note was void as having been obtained by duress.<sup>364</sup>

The abuse of any process, either civil or criminal, to compel a party, by imprisonment, to do any act against his will except to pay the debt for which he is arrested, is entirely illegal, and the act may be avoided, on the ground of duress.<sup>37</sup> Thus where an arrest was without any warrant or lawful authority and a note was signed under such pressure.<sup>38</sup> Duress is a perfect defense to an action between the original parties and parties having notice of it.<sup>39</sup>

§ 146. **Want or defect of consideration.** The largest number of defenses concern consideration. Anything which is a good consideration in a contract is a good one in a bill or note, or a negotiable instrument. If a person has bought something and agreed to give something in return, the court will not look into whether he has gotten value, the courts do not look into that, but the court will look into some other matters. If there has been no consideration whatever, the court will look into that as between the immediate parties—that is a personal defense.<sup>40</sup> As between the parties, one who has notice of want or failure of consideration, that is a defense the maker can set up against him. For instance, A makes a promissory note and gives it to B as a gift; there is no consideration; A only thereby promises to give B \$50 in the future. As between the parties there can be no recovery; but if A gives B a note of a third person, it is held there is sufficient consideration and B can recover from that person, but he cannot recover against A in the first case on account of the want of consideration.

By failure of consideration, we mean something which apparently had a good consideration, but for some cause or other the consideration has failed.<sup>41</sup> A thinks he owns a certain piece of property, but there is a judgment against him and execution has not been taken and A conveys that property to B for B's note. In the meantime, the property is taken on execution—

<sup>364</sup> *Spoerer v. Wehland*, — —, 100 A. 287.

<sup>37</sup> *Thurman v. Burt*, 53 Ill. 129; *Shauk v. Phelps*, 6 Ill. App. 612; *Sheu v. Spooner*, 9 N. H. 197, 32 Am. Dec. 348.

<sup>38</sup> *Osborn v. Robbins*, 36 N. Y. 365.

<sup>39</sup> *Graham v. Marks*, 98 Ga. 67, 25 S. E. 931.

<sup>40</sup> *Farmers' Savings Bank v. Hausman*, 114 Ia. 49, 86 N. W. 31; *Chicago Title & Trust Co. v. Bary*, 165 Mo. 197, 65 S. W. 303; *Hogan v. Bigler*, 5 Okla. 575, 49 Pac. 1011.

<sup>41</sup> *Shirk v. Neible*, 156 Ind. 66, 59 N. E. 281, 83 Am. St. Rep. 150; *Ingersoll v. Martin*, 58 Md. 67, 42 Am. Rep. 322.

there has been a failure of consideration and that note could not be recovered upon.

Want of consideration is matter of defense as against any person not a holder in due course.<sup>43</sup>

Partial failure of consideration is a defense *pro tanto* against an immediate party when the failure is an ascertained and liquidated amount in money.<sup>43</sup> But it is not a defense against a remote party holder for value.<sup>44</sup> A few decisions hold that a partial failure of consideration will not constitute a good defense in any case whether definite or indefinite.<sup>45</sup>

The Negotiable Instruments Law has the following provision: "*Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.*"<sup>45a</sup>

Total failure, as against an immediate party is a good defense,<sup>46</sup> but not as against a remote party who is a *bona fide* holder for value without notice.<sup>47</sup> Thus where the consideration of the note was that the payee should act as executor for the maker, and the payee died first, the note could not be enforced against the maker. So where a bill is drawn by one party on another payable to his own order, and is accepted, if the consideration fails as between these two, an indorsee for value who knows that the consideration has failed cannot sue the acceptor.

§ 147. **Illegality of consideration.** Under the division "Illegality of Consideration" there are three classes of cases:

(1) Those prohibited by statute, unless the statute renders the contract absolutely void.

(2) Common law prohibitions.

(3) Those against public policy.

Where the consideration is illegal in whole or in part it is a defense against the entire note while in the hands of an imme-

<sup>43</sup> Angier v. Brewster, 69 Ga. 362; Hickson v. Earley, 62 S. C. 42, 39 S. E. 782; Clarion Second Nat. Bank v. Morgan, 165 Pa. St. 199, 30 Atl. 957, 44 Am. St. Rep. 652.

<sup>43</sup> Russ Lumber Co. v. Muscupi-able L. & W. Co., 120 Cal. 521, 52 Pac. 995, 65 Am. St. Rep. 186; Cook v. Mix, 11 Conn. 432; Journal Printing Co. v. Maxwell, 1 Pennw. (Del.) 511, 43 Atl. 615; Wadsworth v. Smith, 10 Shep. (Me.) 500; Truesdale v. Watts, 12 Pa. St. 73.

<sup>44</sup> Edwards v. Porter, 42 Tenn. (2 Cold.) 42.

<sup>45</sup> Reddick v. Mackler, 23 Fla. 335, 2 So. 698; Hinton v. Scott, Dud. (Ga.) 245; Stocks v. Scott, 188 Ill. 266, 58 N. E. 990.

<sup>45a</sup> Neg. Inst. Law, § 28.

<sup>46</sup> Russ Lumber etc. Co. v. Muscupi-able L. & W. Co., 120 Cal. 52; Ingersoll v. Martin, 58 Md. 67, 42 Am. Rep. 322.

<sup>47</sup> Morrison v. Farmers' & Merchants' Bank, 9 Okla. 697, 60 Pac. 275; Trustees v. Hill, 12 Ia. 462.

mediate party or one who is not a *bona fide* holder for value without notice. In general, the consideration for a bill is illegal when it is wholly or in part immoral, contrary to public policy, or forbidden under penalties by statute.<sup>48</sup>

A distinction is to be made between a consideration simply illegal and one which by statute expressly makes an instrument void. In the former case a *bona fide* transferee may recover, though not in the latter.<sup>49</sup>

Where an instrument is given for a consideration which the statute expressly makes void, the party who gave the paper may set it up as a defense against all the holders whether immediate or remote, but the holder can sue the indorser.<sup>50</sup> It is no longer customary by law to make notes expressly void by statute, and where such statutes do exist a clause frequently saves the rights of innocent holders, but this is not always the case. The holder of commercial paper is *prima facie* presumed to be an innocent holder for value, but where there is evidence affecting the bill or note with fraud or illegality, the burden of proof is shifted to the holder to show that he is an innocent holder for value.<sup>51</sup> In case the holder can show that he paid full value the defendant must then show that the holder had notice of the fraud or illegality. So it is held that where the holder has in good faith given part value he may recover to a like amount. Commercial paper based upon considerations which contravene public policy are void.<sup>52</sup> Among such considerations is that for the purchase and sale of so-called "Bohemian Oats" at an exorbitant price.<sup>53</sup>

Where one gives a note to another and for the reason that the other has committed a crime or will commit a crime—such

<sup>48</sup> Bell v. Putnam, 123 Cal. 134, 55 Pac. 773; Baker v. Parker, 23 Ark. 390; Dickson v. Kittson, 75 Minn. 168, 77 N. W. 820, 74 Am. St. Rep. 447; Irwin v. Margaret, 26 Ind. App. 383, 59 N. E. 38.

<sup>49</sup> Robinson v. Coleman, 141 Mass. 231, 4 N. E. 619, 55 Am. Rep. 471; Ferris v. Tavel, 87 Tenn. 386, 11 S. W. 93, 3 L. R. A. 414; Woodson v. Barrett, 2 Hen. & M. 80, 3 Am. Dec. 612; Snoddy v. Bank, 88 Tenn. 573, 13 S. W. 127, 7 L. R. A. 705.

<sup>50</sup> Snoddy v. Bank, 88 Tenn. 573, 13 S. W. 127, 7 L. R. A. 705; Morton v. Fletcher, 2 A. K. Marsh (Ky.) 137, 12 Am. Dec. 366; Cun-

ningham v. Bank, 71 Ga. 400, 51 Am. Rep. 266.

<sup>51</sup> Farmers' & Citizens' Bank v. Noron, 45 N. Y. 762; Davis v. Bartlett, 12 Ohio St. 584, 80 Am. Dec. 375; Nickerson v. Ruger, 76 N. Y. 279.

<sup>52</sup> Yeats v. Williams, 5 Ark. 684; Ball v. Putnam, 123 Cal. 134, 55 Pac. 773; Stoutenberg v. Lyband, 13 Ohio St. 228; Meachem v. Dow, 32 Vt. 721.

<sup>53</sup> Schmuck v. Waters, 125 Ind. 265, 25 N. E. 281; Payne v. Raubinck, 82 Ia. 587, 48 N. W. 995; Merrill v. Parker, 80 Ia. 542, 45 N. W. 1076.

note is a violation of the common law and there can be no recovery on it, that is, it is a personal defense which can be set up.<sup>54</sup>

§ 148. **Payment.** Payment in due course is the discharge of the instrument and is a good defense,<sup>55</sup> but payment by one secondarily liable is not a discharge of the instrument.<sup>56</sup>

If a person makes an instrument and it becomes due and payment is made, then it is discharged, but if he purchases the instrument and it is not intended as in payment, it is not discharged.

<sup>54</sup> *Barker v. Parker*, 23 Ark. 390;  
*Baker v. Farris*, 61 Mo. 389.

<sup>55</sup> *Swope v. Ross*, 40 Pa. St. 186;  
*Ballard v. Greenbush*, 24 Me. 336;  
*Gardner v. Maynard*, 7 Allen 456.

<sup>56</sup> *Morgan v. Rentzel*, 7 Cranch. 273; *West Boston's Sav. Bank v. Thompson*, 124 Mass. 506; *Callon v. Lawrence*, 3 Maule & S. 95.

## CHAPTER XVI.

### PRESENTMENT, NOTICE OF DISHONOR AND PROTEST.

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| § 149. Meaning of terms.                                   | § 165. Notice of dishonor—In general.  |
| 150. In general.   | 166. Notice of dishonor—Contents.  |
| 151. Presentment for acceptance—When essential.            | 167. Notice of dishonor—By whom given and when to be given.                  |
| 152. Presentment for acceptance—Benefit.                   | 168. Notice of dishonor—To whom given.                                       |
| 153. Presentment for acceptance—Time.                      | 169. Notice of dishonor—Time of.   |
| 154. When instrument dishonored by non-acceptance.         | 170. Notice of dishonor—Place of sending.                                    |
| 155. Presentment for payment—In general.                   | 171. Notice of dishonor—Notice through postoffice.                           |
| 156. Presentment for payment—When essential.               | 172. Notice of dishonor—When notice unnecessary.                             |
| 157. Presentment for payment—When dispensed with.          | 173. Notice of dishonor—Excuses for failure.                                 |
| 158. Presentment for payment—What sufficient.              | 174. Notice of dishonor—Effect of notice as to prior and subsequent parties. |
| 159. Presentment for payment—Date.                         | 175. Protest—Method of.  |
| 160. Presentment for payment—When delay excused.           | 176. Protest—Purpose.  |
| 161. Presentment for payment—Place.                        | 177. Protest—Notice.   |
| 162. Presentment for payment—To whom.                      | 178. Protest—What should be protested.                                       |
| 163. Presentment for payment—Effect of failure to present. | 179. Protest—Waiver.   |
| 164. When instrument dishonored by non-payment.            | 180. Protest—Miscellaneous matters.  |

§ 149. **Meaning of terms.** By Presentment is meant the production of a bill of exchange to the drawee for his acceptance, or to the drawee or acceptor for payment; or the production of a promissory note to the party liable for payment of the same.<sup>1</sup>

By Protest is meant a formal statement in writing made by a notary under his seal of office, at the request of the holder of a bill or note, in which it is declared that the same was on a certain day presented for payment (or acceptance, as the case may be), and that such payment (or acceptance) was refused, whereupon

<sup>1</sup> Windham Bank v. Norton, 22 Metc. (Mass.) 216; Fiske v. Beck-Conn. 213, 56 Am. Dec. 397; Fall with, 19 Vt. 315, 46 Am. Dec. 174. River Union Bank v. Willard, 5

the notary protests against all parties to such instrument, and declares that they will be held responsible for all loss or damage arising from its dishonor.<sup>3</sup>

By Notice of Dishonor is meant a notification to the parties on an instrument whom it is desired to hold liable on such instrument. If such notice were given by a notary it would be called a protest. When a negotiable bill or note is dishonored by non-acceptance on presentment for acceptance, or by non-payment at its maturity, it is the duty of the holder to give immediate notice of such dishonor to the drawer, if it be a bill, and to the indorser, whether it be a bill or note.<sup>3</sup>

§ 150. In general. We shall now consider the matter of presentment and notice of dishonor. What was the contract of the drawer and the indorser? He says, "I will pay this instrument if you present the instrument to the parties to whom it should be presented and by whom it should be accepted, and if they do not pay it or accept it, I will pay it, but my contract is that it must be presented to them first." Now, if it is not shown that the instrument was presented for acceptance or payment then he will not be liable on it. These things may be waived by contract, but when not waived they must be established. Presentment for acceptance or presentment for payment must be made in order to hold certain parties on the instrument because that is the contract they enter into.

As to presentment for payment the contract of the drawer is that he will pay the instrument providing the acceptor does not, and he is duly notified of that fact.<sup>4</sup> The indorser makes the same contract with his subsequent indorsers. He says, "You notify me of the fact that the drawee does not pay that instrument and I will pay it." Therefore, if we are going to hold the indorsers, we must perform our part of the contract.<sup>5</sup> The instrument may be dishonored for failure to accept also.<sup>6</sup>

<sup>3</sup> Ocoll Bank v. Hughes, 42 Tenn. (Coldw.) 52; Williams v. Parks, 63 Neb. 747, 89 N. W. 395, 56 L. R. A. 759; Anville Nat. Bank v. Keltering, 106 Pa. St. 531, 51 Am. Rep. 536.

<sup>4</sup> Jagger v. Nat. German-American Bank, 53 Minn. 386; Juniata Bank v. Hale, 16 S. & R. (Pa.) 157, 16 Am. Dec. 558; Brown v. Ferguson, 4 Leigh (Va.) 37, 24 99 Ia. 162, 68 N. W. 677, 61 Am. St. Rep. 230, 35 L. R. A. 381; Piscataqua Exch. Bank v. Carter, 20 N. H. 246, 51 Am. Dec. 217.

Am. Dec. 707; *In re Leeds Banking Co.*, L. R. I. Eq. 1.

<sup>5</sup> Los Angeles Nat. Bank v. Wallace, 101 Cal. 478, 36 Pac. 197; Baxter v. Graves, 2 A. K. Marsh (Ky.) 152, 12 Am. Dec. 374; Cruger v. Armstrong, 3 Johns. Cas. (N. Y.) 5, 2 Am. Dec. 126. As to presentment, demand and notice in general, see note 2 U. S. L. Ed. 102.

<sup>6</sup> Wilmington Bank v. Cooper, 1 Han. (Del.) 10; Leonard v. Olson,

<sup>6</sup> Bolton v. Harrod, 9 Mart. (La.) 326, 13 Am. Dec. 300; Turner v. Greenwood, 9 Ark. 44; Hymar

§ 151. **Presentment for acceptance—When essential.** In a previous chapter we have discussed acceptance.<sup>7</sup>

We shall now consider presentment for acceptance. In certain cases presentment for acceptance is not essential, and in others it is. In those jurisdictions where days of grace are recognized a bill payable at sight must be presented for acceptance. A bill payable after sight, say five days after sight, should be presented for acceptance and then after that for payment.<sup>8</sup> So many days after demand requires presentment for acceptance.

The Negotiable Instruments Law provides:

*"Presentment for acceptance must be made:*

1. *Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or,*

2. *Where the bill expressly stipulates that it shall be presented for acceptance; or,*

3. *Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.*

*In no other case is presentment for acceptance necessary in order to render any party to the bill liable."*<sup>9</sup>

Where a bill is payable at a day certain or at a fixed time after its date it need not be presented for acceptance, but the holder may so present it, and if acceptance be refused, he may treat the bill as dishonored.<sup>10</sup>

§ 152. **Presentment for acceptance—Benefit.** What is the benefit of presentment for acceptance? A draws on B in favor of C. Well, you can see it is an advantage to A if C notifies him that B refuses to accept that instrument. A knows he must take care of himself in regard to B, and it helps C because it makes him know where he must look for his money, that is, to A.

§ 153. **Presentment for acceptance—Time.** The time for presentment is in a reasonable time.<sup>10</sup> The hour of the day for

v. Sheldon, 12 Wend. (N. Y.) 439, 27 Am. Dec. 137.

<sup>7</sup> See Chapter VIII, *supra*.

<sup>8</sup> Oleson v. Wilson, 20 Mont. 544, 52 Pac. 372, 63 Am. St. Rep. 639; Aymar v. Beers, 7 Cow. (N. Y.) 705, 17 Am. Dec. 538; Brown v. Turner, 11 Ala. 752; Mitchell v. Degrand, 1 Mason (U. S.) 176, 17 Fed. Cas. No. 9,661; Kampmann v. Williams, 70 Tex. 568, 8 S. W. 310. As to necessity to present for acceptance, see note 1 U. S. L. Ed.

640. As to presentment of demand notes to hold indorsers, see 28 U. S. L. Ed. 1044.

<sup>9</sup> Neg. Inst. Law. § 143, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>10</sup> National Park Bank v. Saitta, 127 App. Div. (N. Y.) 624, 111 N. Y. Supp. 927.

<sup>10</sup> Phoenix Ins. Co. v. Allen, 11 Mich. 501, 83 Am. Dec. 756; Thornburg v. Emmons, 23 W. Va. 325;



presentment, if you are presenting it to a business man, is at his office during his office hours.<sup>11</sup> You apply your common sense as to the time of day for the presentment.

The Negotiable Instruments Law has the following provisions covering this subject:

*"Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged."*<sup>12</sup>

This section also states the rule at common law.

*"A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day."*<sup>13</sup>

In some jurisdictions the last sentence is omitted and in still others there are some changes.

Another section of the Negotiable Instruments Law provides as follows:

*"Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers."*<sup>14</sup>

**§ 154. When instrument dishonored by non-acceptance.** As to when an instrument is dishonored by non-acceptance the Negotiable Instruments Law provides:

*"A bill is dishonored by non-acceptance: (1) When it is duly presented for acceptance, and such an acceptance as is prescribed by this act is refused or cannot be obtained; (2) When presentment for acceptance is excused and the bill is not accepted."*<sup>15</sup>

Bolton v. Harrod, 9 Mart. (La.) 326, 13 Am. Dec. 306; Aymar v. Beers, 7 Cow. (N. Y.) 705, 17 Am. Dec. 538; Jordan v. Wheeler, 20 Tex. 698.

<sup>11</sup> Nelson v. Fottrell, 7 Leigh (Va.) 179; Parker v. Gordon, 7 East. 385, 6 Esp. 41.

<sup>12</sup> Neg. Inst. Law, § 144, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>13</sup> Neg. Inst. Law, § 146, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>14</sup> Neg. Inst. Law, § 147, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>15</sup> Neg. Inst. Law, § 149, where all cases directly or indirectly bearing upon or citing the Law are grouped.

*"Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance, or he loses the right of recourse against the drawer and indorsers."*<sup>16</sup>

*"When a bill is dishonored by non-acceptance an immediate right of recourse against the drawers and indorsers accrues to the holder, and no presentment for payment is necessary."*<sup>17</sup>

**§ 155. Presentment for payment—In general.** The engagement entered into by the acceptor of a bill and the maker of a note is, that it shall be paid at its maturity—that is, on the day that it falls due, and at the place specified for payment, if any place be designated—upon its presentment.<sup>18</sup> This engagement is absolute, but that of the drawer of a bill and the indorser of a bill or note is conditional and contingent upon the true presentment at maturity, and notice in case it is not paid.<sup>19</sup>

It is not necessary that a presentment for payment should be personal. It is sufficient if made at the place specified in the instrument,<sup>20</sup> or personally if the maker or acceptor waives his right of having it made at the place stipulated in the contract,<sup>21</sup> or, if no place is specified in the instrument, then if made at the place of business or residence of the maker or acceptor.<sup>22</sup>

It is provided in the Negotiable Instruments Law as follows:

*"The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need."*

<sup>16</sup> Neg. Inst. Law, § 150, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>17</sup> Neg. Inst. Law, § 151, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>18</sup> Cox v. Nat. Bank, 100 U. S. 712; Jeune v. Ward, 1 B & Ald. 653; Snope v. Ross, 40 Pa. St. 186, 80 Am. Dec. 567.

<sup>19</sup> Johnson v. Zeckendorf (Ariz. 1886), 12 Pac. 65; Jones v. Robinson, 11 Ark. 504, 54 Am. Dec. 212; Grange v. Reigh, 93 Wis. 552. As to demand as against maker of note or acceptor of bill, see note 6 U. S. L. Ed. 443. As to usage or custom as controlling and varying demand, notice and days of

grace, see note 6 U. S. L. Ed. 512.

<sup>20</sup> Wolfe v. Jewett, 10 La. 383; Goodloe v. Godley, 13 Sm. & M. (Miss.) 233; Brownell v. Freese, 35 N. J. L. 285, 51 Am. Dec. 150, 10 Am. Rep. 239; McKenney v. Whipple, 21 Me. 98; Freeman v. Curran, 1 Minn. 161.

<sup>21</sup> King v. Crowell, 61 Me. 244, 14 Am. Rep. 560; Townsend v. Chas. H. Heer Dry Goods Co., 85 Mo. 503; King v. Holmes, 11 Pa. St. 456.

<sup>22</sup> Sharnburgh v. Cemmagere, 10 Mart. (La.) 18; Simmons v. Bet., 35 Mo. 461; Sussex Bank v. Baldwin, 17 N. J. L. 487; Oxnard v. Varnum, 111 Pa. St. 193, 2 Atl. 224, 56 Am. Rep. 255. As to banking customs as to demand and notice, see note 21 L. R. A. 441.

*It is in the option of the holder to resort to the referee in case of need or not, as he may see fit."*<sup>22a</sup>

The usual form is "In case of need, apply to Messrs. C. and D. at E." If the referee pays the bill the drawer will be liable to him for the amount. The provision is seldom inserted in bills.

**§ 156. Presentment for payment—When essential.** As to when presentment for payment is essential the law generally is as set out in the Negotiable Instruments Law which provides as follows:

*"Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers."*<sup>23</sup>

Some jurisdictions have made some changes in the above section of the law, for example, in Illinois the words "except in case of bank notes" are interpolated after the words "primarily liable" on the instrument; in Wisconsin all after the words "primarily liable" in the first sentence to the end of that sentence are omitted; in Kansas, New York and Ohio the words "and has funds there available for that purpose" have been interpolated after the word "maturity" in the first sentence. The words added by these three states seem superfluous, however.

It has been urged against the above section of the law that it changes the law in a number of the states as to certificates of deposit and bank notes and that it should be amended to except them from under the sections, since as it stands, the statute of limitations would begin to run from date, which is contrary to business custom and the language of such instruments.

*"Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument."*<sup>24</sup>

That the drawer of a bill has no funds in the hands of the drawer will not excuse failure to make presentment and notice of non-payment, particularly when provision has been made for

<sup>22a</sup> Neg. Inst. Law, § 131, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>23</sup> Neg. Inst. Law, § 70, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to presentment when

paper held as collateral or conditional payment, see note 68 L. R. A. 487.

<sup>24</sup> Neg. Inst. Law, § 79, where all cases directly or indirectly bearing upon or citing the Law are grouped.

payment of any bill drawn by the drawer on the drawee.<sup>265</sup> But presentment is not required to charge the drawer of a check upon which payment has been stopped,<sup>266</sup> and presentment of a check is excused where the making of a check was a fraud upon the part of the drawer, he having no funds in the bank, and no ground for a reasonable expectation that it would be paid.<sup>267</sup>

And "*presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.*"<sup>268</sup>

The Illinois act omits everything after the words "for his accommodation."

It is not necessary under this section that a loan for which notes were given should have been made for the sole accommodation of an indorser but it is enough if it was only partly for his benefit.<sup>269</sup> And where the instrument is made for the accommodation of the indorser, and he promises the maker to "take care of it," presentment and notice of dishonor are not necessary.<sup>270</sup>

**§ 157. Presentment for payment—When dispensed with.** Presentment for payment may be dispensed with as set out by the terms of the Negotiable Instruments Law which provides:

*"Presentment for payment is dispensed with: (1) Where after the exercise of reasonable diligence presentment as required by this act cannot be made; (2) where the drawee is a fictitious person; (3) by waiver of presentment express or implied."*<sup>271</sup>

**§ 158. Presentment for payment—What sufficient.** As to what constitutes a sufficient presentment the Negotiable Instruments Law provides:

*"Presentment for payment, to be sufficient, must be made: (1) By the holder, or by some person authorized to receive payment on his behalf; (2) at a reasonable hour on a business day; (3) at a proper place as herein defined; and (4) to the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made."*<sup>272</sup>

<sup>265</sup> Simonoff v. Granite City Nat. Bank, 279 Ill. 246, 116 N. E. 636.

<sup>266</sup> Sibree v. Thomas, 166 Ill. App. 422.

<sup>267</sup> Beauregard v. Knowlton, 156 Mass. 395.

<sup>268</sup> Neg. Inst. Law, § 80, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>269</sup> Berger v. Trimble (Md.), 101 A. 137.

<sup>270</sup> Dillon v. Brion, 96 Kan. 189, 150 P. 553.

<sup>271</sup> Neg. Inst. Law, § 82, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>272</sup> Neg. Inst. Law, § 72, where all cases directly or indirectly bear-

*"The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered to the party paying it."*<sup>290</sup>

This section does not change the law but states an old established rule of law. The reason of the rule is plain and is necessary in order that the drawer or acceptor may be able to judge of the genuineness of the instrument; of the right of the holder to receive payment; and that he may immediately reclaim possession upon paying the amount.<sup>291</sup>

A mere informal talk asking payment of a note, not accompanied with a presentment of it or intended as a formal presentment and demand, is not sufficient to put the note in dishonor,<sup>292</sup> and a demand over the telephone is not a sufficient presentment to charge the indorser unless the maker waives the right to ask for an exhibition of the note.<sup>293</sup>

Since formal demand is required only in order to charge the parties secondarily liable, it follows that any reasonable request to pay a demand note with a clause for attorney's fees, is sufficient to put the maker in default if he fails to discharge the obligation; the maker waives exhibition of the note by not asking for it and refusing payment on the ground that he did not have the money and needed the sum to support his family.<sup>294</sup>

**§ 159. Presentment for payment—Date.** In ascertaining the proper date for presentment the day of the date is excluded so where the paper is payable one year from date it will mature on the first anniversary of that date. The Negotiable Instruments Law provides:

*"Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment."*<sup>295</sup>

Thus in an instrument payable so many days after sight, or after date, the day of sight or date is excluded and the day of payment included in the computation.<sup>31</sup>

ing upon or citing the Law are grouped. As to necessity of actual presentment to effect dishonor, see note 13 L. R. A. (N. S.) 303.

<sup>290</sup> Neg. Inst. Law, § 74, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>291</sup> Waring v. Betts, 90 Va. 46, 51.

<sup>292</sup> State of New York Nat. Bank

v. Kennedy, 145 App. Div. 669, 130 N. Y. Supp. 412.

<sup>293</sup> Gilpin v. Savage, 201 N. Y. 167, 94 N. E. 656.

<sup>294</sup> Hodge v. Blaylock, 82 Ore. 179, 161 Pac. 396.

<sup>295</sup> Neg. Inst. Law, § 86, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>31</sup> Mitchell v. Degrand, 1 Mason

A note dated November 8, 1922, and payable twelve months after date should be presented November 8, 1923, and not November 9, 1923.

Another provision relating to the date of presentment is the following:

*"Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof."*<sup>23</sup>

Presentment for payment cannot be made on a Sunday or legal holiday, and if the note matures on a holiday or Sunday, since the maker<sup>23</sup> cannot be compelled to pay sooner than he had promised, the note or bill will have to be presented on the next business day.

The Negotiable Instruments Law provides:

*"Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday."*<sup>24</sup>

Several changes have been made in this section in many jurisdictions and these should be read as they are set out in the annotations in another part of this treatise.

By usage the banks in some states give notice to the promisor a few days before maturity of the fact that the paper will be due on a named day, and it has been held that this preliminary notice will take the place of a formal presentment on the day of maturity.

**§ 160. Presentment for payment—When delay excused.** As to when delay in making presentment for payment is excused the

(U. S.) 176, 17 Fed. Cas. No. 9,661; *Coleman v. Sayer*, 1 Barn. K. B. 303.

<sup>21a</sup> *Lewry v. Wilkinson*, 135 La. 105, 64 So. 1003.

<sup>23</sup> Neg. Inst. Law, §71, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>23</sup> Neg. Inst. Law, § 194 and § 85 where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>24</sup> Neg. Inst. Law, § 85, where all cases directly or indirectly bearing upon or citing the Law are grouped.

following provision in the Negotiable Instruments Law sets out the law in general:

*"Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence."*<sup>35</sup>

The above section follows the old established law.

A loss resulting from the failure of the bank at which the instrument is payable, and in which the maker or acceptor has deposited funds at its maturity to pay it, does not fall upon the holder who has failed to present the instrument for payment.<sup>35a</sup>

It must be shown that the proper steps were taken as soon as the disability was removed.<sup>35b</sup>

In the excuses set out in the above section of the law where the facts are not disputed the question of due diligence is one of law for the court; but if there is a dispute as to the facts, the question is for the jury.<sup>35c</sup>

**§ 161. Presentment for payment—Place.** The following provisions are found in the Negotiable Instruments Law, and represent the law generally, as to the place of presentment for payment:

*"Presentment for payment is made at the proper place: (1) Where a place of payment is specified in the instrument and it is there presented. (2) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented. (3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment. (4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence."*<sup>36</sup>

*"Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient."*<sup>37</sup>

<sup>35</sup> Neg. Inst. Law, § 81, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>35a</sup> Note 2 A. L. R. 1381.

<sup>35b</sup> *Wilson v. Senior*, 14 Wis. 380.

<sup>35c</sup> *Belden v. Lamb*, 17 Conn. 451.

<sup>36</sup> Neg. Inst. Law, § 73, where all cases directly or indirectly bearing upon or citing the Law are grouped. See also note 12 L. R. A. 727.

<sup>37</sup> Neg. Inst. Law, § 75, where all

§ 162. **Presentment for payment to whom.** When a bill is payable generally or at a particular place no presentment is necessary to charge the acceptor, as it is his duty to be on hand to pay or seek out his creditor to pay him.<sup>38</sup>

The following provisions are in the Negotiable Instruments Law:

*"Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if with the exercise of reasonable diligence, he can be found."*<sup>39</sup>

*"Where there are several persons not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all."*<sup>40</sup>

*"Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm."*<sup>41</sup>

There is no doubt that a clerk found at the counting-room of the acceptor or promisor is a competent party for presentment for payment to be made to, without showing any special authority given him.<sup>42</sup> But where the protest stated the mere fact of presentment "at the office of the maker," it will be considered insufficient, as not showing that the paper was presented to the party authorized to pay or refuse payment. A demand upon the servant of the owner who used to pay money for him was held sufficient in England.<sup>43</sup>

§ 163. **Presentment for payment—Effect of failure to present.** The maker and acceptor are bound, although the bill or note be not presented on the day it falls due,<sup>44</sup> and the only

cases directly or indirectly bearing upon or citing the Law are grouped. As to parol agreement as to place of demand, when valid, see note 7 U. S. L. Ed. 65.

<sup>38</sup> *Cooperstown Bank v. Woods*, 28 N. Y. 545; *Goodloe v. Godley*, 13 Sm. & M. (Miss.) 233, 51 Am. Dec. 150; *De Wolf v. Murray*, 2 Sandf. (N. Y.) 166.

<sup>39</sup> Neg. Inst. Law, § 76, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>40</sup> Neg. Inst. Law, § 78, where all cases directly or indirectly bear-

ing upon or citing the Law are grouped.

<sup>41</sup> Neg. Inst. Law, § 77, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>42</sup> *Stewart v. Eden*, 2 Caines (N. Y.) 121; *Draper v. Clemens*, 4 Mo. 52; *Stainback v. Clemens*, 11 Gratt 260.

<sup>43</sup> *Bank of England v. Newman*, 12 Mod. 241.

<sup>44</sup> *Steiner v. Jeffries*, 118 Ala. 573, 24 So. 37; *Greeley v. Whitehead*, 35 Fla. 523, 17 So. 643, 48 Am. St. Rep. 258; *Westcott v. Pat-*



consequence of a failure to make such presentment is that the maker or acceptor, if he was ready at the time and place to make the payment, may plead the matter in bar of damages and costs;<sup>44a</sup> but the drawer and indorsers are discharged if such presentment be not made, unless some sufficient cause excuses the holder for failure to perform that duty.<sup>45</sup>

The fact that the indorser holds security to indemnify him against loss upon his indorsement does not make presentment for payment and notice of dishonor unnecessary.<sup>45a</sup>

**§ 164. When instrument dishonored by non-payment.** *"The instrument is dishonored by non-payment when: (1) It is duly presented for payment and payment is refused or cannot be obtained; or (2) presentment is excused, and the bill is overdue and unpaid."*<sup>46</sup>

**§ 165. Notice of dishonor—In general.** Notice of dishonor is bringing either verbally or by writing, to the knowledge of the drawer or the indorser of an instrument, the fact that a specified negotiable instrument, upon proper proceedings taken, has not been accepted, or has not been paid, and that the party notified is expected to pay it.<sup>47</sup>

*"The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails."*<sup>48</sup>

**§ 166. Contents of notice.** In order that the notice may be complete, it should contain, (1) a sufficient description of the bill or note;<sup>49</sup> (2) a statement that it had been presented for

ton, 10 Colo. App. 544, 51 Pac. 1021.

<sup>44a</sup> Moore v. Alton, 196 Ala. 158, 70 So. 681.

<sup>45</sup> Jones v. Robinson, 11 Ark. 504, 54 Am. Dec. 212; Wylie v. Cotter, 170 Mass. 356, 49 N. E. 746, 64 Am. St. Rep. 305; Piscataqua Exch. Bank v. Carter, 20 N. H. 246, 57 Am. Dec. 217; Los Angeles Nat. Bank v. Wallace, 101 Cal. 478, 36 Pac. 197.

<sup>45a</sup> Whitney v. Collins, 15 R. I. 44.

<sup>46</sup> Neg. Inst. Law, § 83, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>47</sup> Martin v. Brown, 75 Ala. 442; Ticonic Bank v. Stackpole, 41 Me. 321, 66 Am. Dec. 246. As to notice of demand, non-payment, and protest in general, see note 5 U. S. L. Ed. 215.

<sup>48</sup> Neg. Inst. Law, § 96, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>49</sup> Brown v. Jones, 125 Ind. 375, 25 N. E. 452, 21 Am. Rep. 227; Dodson v. Taylor, 56 N. J. L. 11, 28 Atl. 316; Alexandria Bank v. Swann, 9 Pet. (U. S.) 33, 9 L. Ed. 40.

acceptance or payment, and had been dishonored,<sup>50</sup> (3) a statement that the paper had been protested,<sup>51</sup> and (4) an announcement of the intention of the holder to look to the party addressed for payment.<sup>52</sup>

A statement of non-payment is not sufficient without a statement that presentment and demand had been made, but if the word "dishonored" is used it is held to be sufficient without further statement of presentment and demand.

Notice is sufficient if the necessary facts can reasonably be inferred from the terms of the notice.

*"A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby."*<sup>53</sup>

No misdescription of the amount,<sup>54</sup> or of the date, or of the names of the parties,<sup>55</sup> or of the time the paper falls due,<sup>56</sup> or other defect vitiates the notice of dishonor, unless it misleads the party to whom sent.

§ 167. By whom given and when to be given. The proper party to give the notice is the holder<sup>57</sup> or his authorized agent,<sup>58</sup> or an indorser who is at the time of giving it liable on the bill and who has a right of recourse against the party to whom notice is given.<sup>59</sup> That is, the notice must be given by a party to the

<sup>50</sup> *Towsend v. Lorain Bank*, 2 Ohio St. 345; *Sinclair v. Lynch*, 1 Speers (S. C.) 244; *Newberry v. Trowbridge*, 4 Mich. 391.

<sup>51</sup> *Kellogg v. Pacific Box Factory*, 57 Cal. 327; *Selden v. Washington*, 17 Md. 379, 79 Am. Dec. 659; *Etting v. Schuylkill Bank*, 2 Pa. St. 355, 44 Am. Dec. 205; *Tevis v. Wood*, 5 Cal. 393.

<sup>52</sup> *U. S. Bank v. Norwood*, 1 Harr. & J. (Md.) 423; *Burgess v. Vreeland*, 24 N. J. L. 71, 59 Am. Dec. 408.

<sup>53</sup> *Neg. Inst. Law*, § 95, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>54</sup> *King v. Hurley*, 85 Me. 525; *Alexandria Bank v. Swann*, 9 Pet. (U. S.) 33, 9 L. Ed. 40; *McKnight v. Lewis*, 5 Barb. (N. Y.) 681. See

*Renner v. Downer*, 23 Wend. (N. Y.) 620.

<sup>55</sup> *Brown v. Jones*, 125 Ind. 375, 25 N. E. 452, 21 Am. St. Rep. 227; *Mainer v. Spurlock*, 9 Rob. (La.) 161; *King v. Hurley*, 85 Me. 525, 27 Atl. 463; *Carter v. Bradley*, 19 Me. 62, 36 Am. Dec. 735.

<sup>56</sup> *Saltmarsh v. Tuthill*, 13 Ala. 390; *Smith v. Whiting*, 12 Mass. 6, 7 Am. Dec. 25; *Gates v. Beecher*, 60 N. Y. 518, 19 Am. Rep. 207.

<sup>57</sup> *Tindal v. Brown*, 1 T. R. 167, 1 Rev. Rep. 171; *ex parte Barclay*, 7 Ves. Jr. 597.

<sup>58</sup> *Lindesborg Bank v. Ober*, 31 Kan. 599, 3 Pac. 324; *Tevis v. Randall*, 6 Cal. 632, 65 Am. Dec. 547; *Waldron v. Turpin*, 15 La. 552, 35 Am. Dec. 210.

<sup>59</sup> *Glasgow v. Pratte*, 8 Mo. 336, 40 Am. Dec. 142; *Stanton v. Blos-*

paper or his agent, and a total stranger cannot give proper notice of dishonor.<sup>60</sup> The notary may give the notice as agent for the holder, and so may any bank holding the paper for collection.<sup>61</sup>

*"The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up, would have a right to reimbursement from the party to whom notice is given."*<sup>62</sup>

*"Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not."*<sup>63</sup>

*"Where the instrument has been dishonored in the hands of an agent he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder."*<sup>64</sup>

If the holder die before the time for presentment for payment, it must be made by his personal representative.<sup>65</sup> If there be no personal representative at the time, presentment and demand within a reasonable time after his appointment will be sufficient to charge subsequent parties, although presentment and demand were not made at maturity.

§ 168. Notice of dishonor—To whom given. As to whom notice of dishonor should be given the Negotiable Instruments Law provides:

*"When a negotiable instrument has been dishonored by non-acceptance or non-payment notice of dishonor must be given to*

som, 14 Mass. 116, 7 Am. Dec. 198; Linn v. Horton, 17 Wis 151.

<sup>60</sup> Beal v. Alexander, 6 Tex. 531; Brailsford v. Williams, 15 Md. 150, 74 Am. Dec. 559; Brower v. Wooten, 4 N. C. 507, 7 Am. Dec. 692.

<sup>61</sup> Lindsborg Bank v. Ober, 31 Kan. 599, 3 Pac. 324; Couch v. Sherrill, 17 Kan. 622; Warren v. Gilman, 17 Me. 360; Blackeslee v. Hewett, 76 Wis. 341, 44 N. W. 1105.

<sup>62</sup> Neg. Inst. Law, § 90, where all cases directly or indirectly bear-

ing upon or citing the Law are grouped.

<sup>63</sup> Neg. Inst. Law, § 91, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>64</sup> Neg. Inst. Law, § 94, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>65</sup> White v. Stoddard, 11 Gray (Mass.) 258, 71 Am. Dec. 711; Rand v. Hubbard, 4 Metc. (Mass.) 252.

*the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged,"*<sup>66</sup> and

*"Notice of dishonor may be given either to the party himself or to his agent in that behalf."*<sup>67</sup>

The proper party or parties to be given notice are the drawer,<sup>68</sup> indorser or indorsers,<sup>69</sup> or their authorized agent or other person entitled to receive notice for them.<sup>70</sup> That is, the notice must be given to all persons secondarily liable whom the holder wishes to charge. And notice should be given to indorsers who have indorsed for the purpose of collection,<sup>71</sup> and indorsers of overdue paper.<sup>72</sup> Where there are two or more joint drawers or indorsers who are not partners, notice of dishonor must be given to them all in order to bind either.<sup>73</sup>

Some jurisdictions hold that absence of protest and notice of dishonor is not a defense to an action by one joint indorser of negotiable paper to compel contribution by his coindorsers to the amount paid by him upon the paper.<sup>74</sup> While other jurisdictions decide that if he would hold his coindorsers, he must give notice to them.<sup>75</sup>

When the note is executed by several joint promisors who are not partners, but liable only as joint and several promisors, it

<sup>66</sup> Neg. Inst. Law, § 89, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to sufficiency of notice to indorser, see note 12 L. R. A. 731.

<sup>67</sup> Neg. Inst. Law, § 97, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>68</sup> Patillo v. Alexander, 96 Ga. 60, 22 S. E. 646, 25 L. R. A. 616; Baxter v. Graves, 2 A. K. Marsh. (Ky.) 152, 12 Am. Dec. 374.

<sup>69</sup> McLanahan v. Brandon, 1 Mart. (N. S.) La. 321, 14 Am. Dec. 188; Fotheringham v. Price, 1 Bay. (S. C.) 291, 1 Am. Dec. 618; Peabody Ins. Co. v. Wilson, 29 W. Va. 528, 2 S. E. 888.

<sup>70</sup> Crowley v. Berry, 4 Gill. (Md.) 194; Coffman v. Commonwealth Bank, 41 Miss. 212, 90 Am. Dec. 371. As to whom given after appointment of receiver or assignee, see note 61 L. R. A. 900.

<sup>71</sup> Elizabeth State Bank v. Ayers, 7 N. J. L. 130, 11 Am. Dec. 535; U. S. Bank v. Davis, 2 Hill (N. Y.) 451.

<sup>72</sup> Beer v. Clifton, 98 Cal. 323, 33 Pac. 204, 55 Am. St. Rep. 172, 20 L. R. A. 580; Grand v. Strutzel, 53 Ia. 712, 6 N. W. 119, 36 Am. Rep. 250.

<sup>73</sup> People's Bank v. Keech, 26 Md. 521, 90 Am. Dec. 118; Willis v. Green, 5 Hill (N. Y.) 232, 40 Am. Dec. 351.

See note 36 L. R. A. 703.

Contra: Williams v. Paintsville National Bank, 143 Ky. 781, 137 S. W. 535; Eaves v. Kecton, 196 Mo. App. 424, 193 S. W. 629.

<sup>74</sup> Williams v. Paintsville National Bank, 143 Ky. 781, 137 S. W. 535.

<sup>75</sup> Owens v. Greenlee, — Colo. —, 188 P. 721, 9 A. L. R. 1184.

See note 9 A. L. R. 1188.

has been held, that presentment should be made to each, in order to fix the liability of an indorser.

And as provided by the Negotiable Instruments Law :

*"Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others."*<sup>74</sup>

*"Where the parties to be notified are partners notice to any one partner is notice to the firm, even though there has been a dissolution."*<sup>75</sup>

*"Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee."*<sup>76</sup>

Notice left with a clerk or person in charge, at the party's place of business, in his absence, or at his place of business,<sup>77</sup> without proof as to the person with whom it was left, is sufficient, and proof that such person was not the party's agent has been held irrelevant, notice being left at the right place. Hence, leaving it with his private secretary at his public office is sufficient. If service be sought on the party at his dwelling, it is sufficient to leave notice with his wife, or with any other person on his premises.<sup>78</sup>

*"When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased."*<sup>79</sup>

**§ 169. Notice of dishonor—Time.** As to the time in which notice must be given the Negotiable Instruments Law provides:

*"Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act."*<sup>80</sup>

<sup>74</sup> Neg. Inst. Law, § 100, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>75</sup> Neg. Inst. Law, § 99, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>76</sup> Neg. Inst. Law, § 101, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>77</sup> Crowley v. Barry, 4 Gill (Md.)

194; Coffman v. Commonwealth Bank, 41 Miss, 212, 90 Am. Dec. 371.

<sup>78</sup> Mercantile Bank v. McCarthy, 7 Mo. App. 318; Colms v. Bank of Tenn., 4 Baxt. 422; Bank of Ky. v. Duncan, 4 Bush. (Ky.) 294; U. S. v. Hatch, 1 McLean (U. S.) 92.

<sup>79</sup> Neg. Inst. Law, § 98, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>80</sup> Neg. Inst. Law, § 102., where

The law as to parties residing in the same place is as follows:

*"Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times: (1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following; (2) if given at his residence, it must be given before the usual hours of rest on the day following; (3) if sent by mail, it must be deposited in the postoffice in time to reach him in usual course on the day following."*<sup>81</sup>

And where the parties reside in different places the law is:

*"Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times: (1) If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter; (2) if given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision."*<sup>82</sup>

As to time of giving notice to a subsequent party the law is:

*"Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor."*<sup>83</sup>

**§ 170. Notice of dishonor—Place of sending.** The Negotiable Instruments Law sets out the law as to the place of sending the notice of dishonor. It states:

*"Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows: (1) Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or (2) if he live in one place, and have his place of business in another, notice may be sent to either place; or (3) if he is sojourning in another place, notice may be sent to the place where he is sojourning. But where the notice is actually received by the party within the time specified in this act, it will be sufficient,*

all cases directly or indirectly bearing upon or citing the Law are grouped. As to time within which notice of dishonor must be given, see note 12 L. R. A. 729.

<sup>81</sup> Neg. Inst. Law, § 103, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>82</sup> Neg. Inst. Law, § 104, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>83</sup> Neg. Inst. Law, § 107, where all cases directly or indirectly bearing upon or citing the Law are grouped.

*though not sent in accordance with the requirements of this section.*"<sup>84</sup> This is also the law generally.

§ 171. Notice of dishonor—Through postoffice. As to sending notice through the postoffice the Negotiable Instruments Law states:

*"Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given notice, notwithstanding any miscarriage in the mail."*<sup>85</sup>

*"Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or any letter box under the control of the postoffice department."*<sup>86</sup>

That is, if a notice be given by the holder to an indorser by mail, addressed to the indorser at the postoffice nearest his residence and deposited in the postoffice at the proper time, the indorser will be charged whether he received the notice or not. The letter containing the notice must be posted early enough to be sent by mail on the day succeeding the dishonor of the instrument.

§ 172. Notice of dishonor—When unnecessary. Notice of dishonor is dispensed with: (1) When the drawer or indorser sought to be charged is, as between the parties to the bill, the principal debtor, and has no reason to expect that it will be honored on presentment.<sup>87</sup> (2) As regards the drawer, when drawer and drawee are the same person, or identical in interest.<sup>88</sup> (3) When the drawer or indorser sought to be charged is the person to whom the bill is presented for payment. (4) When the drawee is fictitious and the drawer or indorser sought to be charged was aware of the fact at the time he drew or indorsed the bill.<sup>89</sup> (5) When the drawer or indorser sought to be charged has received an assignment of all the property of the

<sup>84</sup> Neg. Inst. Law, § 108, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>85</sup> Neg. Inst. Law, § 105, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to service of notice by mail, see note 12 L. R. A. 731.

<sup>86</sup> Neg. Inst. Law, § 106, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>87</sup> Kupfer v. Galena Bank, 34 Ill.

328, 85 Am. Dec. 309; Culver v. Marks, 122 Ind. 554, 23 N. E. 1086, 17 Am. St. Rep. 377, 7 L. R. A. 489; Merchants Bank v. Easley, 44 Mo. 286, 100 Am. Dec. 287. As to when drawer or indorser is not entitled to notice, see note 2 U. S. L. Ed. 102.

<sup>88</sup> Planters Bank v. Evans, 36 Tex. 592; New York etc. Co. v. Selma Sav. Bank, 51 Ala. 305; Gowan v. Jackson, 20 Johns. 176.

<sup>89</sup> Groth v. Gyger, 31 Pa. St. 271; Magruder v. Union Bank, 3 Pet. 87.

acceptor as security against his liability.<sup>90</sup> (6) When, after the exercise of reasonable diligence, no notice of dishonor can be given to or does not reach the party sought to be discharged.<sup>91</sup>

The Negotiable Instruments Law has the following provisions as to when notice of dishonor is unnecessary and they represent the law generally:

*"Notice of dishonor is not required to be given to an indorser in either of the following cases:*

1. *Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;*

2. *Where the indorser is the person to whom the instrument is presented for payment;*

3. *Where the instrument was made or accepted for his accommodation."*<sup>92</sup>

*"Notice of dishonor is not required to be given to the drawer in either of the following cases: (1) Where the drawer and drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is the person to whom the instrument is presented for payment; (4) where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (5) where the drawer has countermanded payment."*<sup>93</sup>

*"Notice of dishonor may be waived, either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be express or implied."*<sup>94</sup>

*"Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged."*<sup>95</sup>

**§ 173. Notice of dishonor—Excuse for failure to give notice.** Certain excuses for failure to give notice of dishonor are permitted, thus:

<sup>90</sup> *Prentiss v. Danielson*, 5 Conn. 175, 13 Am. Dec. 52; *Mead v. Small*, 2 Me. 207, 11 Am. Dec. 62; *Perry v. Green*, 19 N. J. L. 61, 38 Am. Dec. 536.

<sup>91</sup> *Walker v. Stetson*, 14 Ohio St. 89, 84 Am. Dec. 362; *Galpin v. Hard*, 3 McCord (S. C.) 394, 15 Am. Dec. 640; *Miranda v. New Orleans City Bank*, 6 La. 740, 26 Am. Dec. 493; *Tunstall v. Walker*, 2 Sm. & M. (Miss.) 638.

<sup>92</sup> *Neg. Inst. Law*, § 115, where all cases directly or indirectly bear-

ing upon or citing the Law are grouped.

<sup>93</sup> *Neg. Inst. Law*, § 114, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>94</sup> *Neg. Inst. Law*, § 109, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>95</sup> *Neg. Inst. Law*, § 112, where all cases directly or indirectly bearing upon or citing the Law are grouped.



*"Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence."*<sup>96</sup>

When political disturbances interrupt and obstruct the ordinary negotiations of trade, they constitute a sufficient excuse for want of presentment or notice, upon the same principle that controls in cases of military operations or interdictions of commerce.<sup>97</sup>

So the prevalence of a malignant, contagious, or infectious disease, such as the cholera, yellow fever, the plague, or small-pox, which has become so extensive as to suspend all commercial business and intercourse or to render it very hazardous to enter into the infected district, is recognized by the text writers as a sufficient excuse for not doing any act which would require an entry into such districts.<sup>98</sup>

Where presentment or notice of dishonor has been waived by express agreement or is implied in the acts of the parties, it is unnecessary;<sup>99</sup> when sudden illness or death of, or accident to, the holder or his agent prevents the presentment of the bill or note in due season, or the communication of notice, the delay is excused, provided presentment is made and notice given as promptly afterward as the circumstances reasonably permit.<sup>1</sup> This doctrine rests upon the same principle as that which excuses want of punctuality when overwhelming calamities or accidents of a general nature prevent. The sudden illness or death of his agent is on the same footing as when these happen to the holder himself. If the excuse be illness, it must be of such a

<sup>96</sup> Neg. Inst. Law, § 113, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>97</sup> *Peters v. Hobbs*, 25 Ark. 67, 91 Am. Dec. 526; *House v. Adams*, 48 Pa. St. 261, 86 Am. Dec. 426; *Ray v. Smith*, 17 Wall. (U. S.) 411, 21 L. Ed. 666.

<sup>98</sup> *Tunno v. Lague*, 2 Johns. Cas. (N. Y.) 1, 1 Am. Dec. 141; *Hanover v. Anderson*, 16 Lea (Tenn.) 340.

<sup>99</sup> *Markland v. McDaniel*, 51 Kan. 350, 32 Pac. 1114, 20 L. R. A. 96; *Hibbard v. Russell*, 16 N. H. 410, 41 Am. Dec. 733; *Schmidt v. Rad-*

*cliffe*, 4 Strobbh. (S. C.) 296, 53 Am. Dec. 678; *Hale v. Damford*, 46 Wis. 554, 1 N. W. 284. As to indorser's promise to pay or acknowledgment of liability after maturity as waiver of lack of notice, see note 6 U. S. L. Ed. 596. Immaterial whether indorser receives notice if due diligence used in sending it, see note 11 U. S. L. Ed. 1000.

<sup>1</sup> *White v. Stoddard*, 11 Gray (Mass.) 258, 71 Am. Dec. 711; *Newbold v. Borsef*, 155 Pa. St. 227, 26 Atl. 305; *Duggan v. King*, Rice (S. C.) 239, 33 Am. Dec. 107; *Wilson v. Sevier*, 14 Wis. 380.

character as to prevent due presentment and notice by the exercise of due diligence.<sup>2</sup>

Where the person against whom the bill is sought to be enforced has been fully secured against loss by the person principally liable on the instrument, and has promised to see to the acceptance or payment of the paper, its presentment is unnecessary.<sup>3</sup>

**§ 174. Notice of dishonor—Effect of notice as to prior and subsequent parties.** *"Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given."*<sup>4</sup>

*"Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given."*<sup>5</sup>

That is, notice of dishonor given by or on behalf of the holder enures to the benefit of all subsequent holders, and all prior indorsers liable on the bill who have a right of recourse against the party to whom notice is given. And notice of dishonor given by or on behalf of an indorser entitled to give notice, enures to the benefit of the holder and all indorsers liable on the bill who have a right of recourse against the party given notice.

A party who receives due notice of the dishonor of a bill, as an indorser, after the receipt of such notice, has the same time in which to give notice to antecedent parties whom he desires to hold liable, as the original holder has after the dishonor of the bill.

*"Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary unless in the meantime the instrument has been accepted."*<sup>6</sup>

*"An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission."*<sup>7</sup>

<sup>2</sup> *Wilson v. Sevier*, 14 Wis. 380; *Purcell v. Allemon*, 22 Gratt. (Va.) 739.

<sup>3</sup> *Prentice v. Danielson*, 5 Conn. 175, 13 Am. Dec. 52; *Perry v. Green*, 19 N. J. L. 61, 38 Am. Dec. 536; *Brandt v. Mickle*, 28 Md. 436.

*Contra, Watkins v. Crouch*, 5 Leigh (Va.) 522.

<sup>4</sup> Neg. Inst. Law, § 92, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>5</sup> Neg. Inst. Law, § 93, where all

cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>6</sup> Neg. Inst. Law, § 116, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>7</sup> Neg. Inst. Law, § 117, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to effect of omission to give notice on paper held as collateral or conditional payment, see note 68 L. R. A. 482.

**§ 175. Protest—Method of.** Protest in its popular signification includes all the steps taken to fix the liability of a drawer or indorsers,<sup>8</sup> but its accurate technical meaning is that it is the testimony of some proper person, usually a notary, that the regular legal steps to fix that liability have been taken by the holder.<sup>9</sup> Its method is for the notary himself to properly present the instrument, and demand its acceptance or payment. If these are refused, to make a minute thereof on the instrument, or in his official record; the minute consisting of his initials, the year, month, and day of dishonor, and his charges. This is done on the day of the dishonor. And on the same day, or afterwards, the notary extends the protest thus noted by embodying in a certificate the facts of the protest, and his acts in making presentment, demand, and in giving notice of dishonor. To this he generally appends his official seal.<sup>10</sup>

Where a notary cannot be obtained protest may be made by any respectable person.<sup>11</sup>

As to protest the Negotiable Instruments Law provides as follows:

*"The protest must be annexed to the bill or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify: (1) The time and place of presentment; (2) the fact that presentment was made and the manner thereof; (3) the cause or reason for protesting the bill; (4) the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found."*<sup>12</sup>

The signature of the notary may be printed;<sup>12a</sup> and neither the seal nor the signature of the notary need be proved.<sup>12b</sup>

A certificate of the protest of a foreign bill of exchange is no proof of the drawer's refusal to accept or pay the bill, unless properly authenticated by the seal of the officer before whom the protest was made.<sup>12c</sup>

<sup>8</sup> *White v. Keith*, 97 Ala. 668, 12 So. 611; *Ayrault v. Pacific Bank*, 47 N. Y. 570, 7 Am. Rep. 489; *Sprague v. Fletcher*, 8 Ore. 367, 34 Am. Rep. 587.

<sup>9</sup> *Swayze v. Britton*, 17 Kan. 625. As to liability of notaries making protest, see note 82 Am. St. Rep. 380.

<sup>10</sup> *Leftley v. Mills*, 4 T. R. 170; *Gale v. Walsh*, 5 T. R. 170; *Rodgers v. Stephens*, 2 T. R. 713.

<sup>11</sup> *Read v. Commonwealth*, 1 T. B. Mon. (Ky.) 91, 15 Am. Dec. 86;

*Donegan v. Wood*, 49 Ala. 242, 20 Am. Rep. 275. As to wrongful protest, see note 30 Am. St. Rep. 158.

<sup>12</sup> Neg. Inst. Law, §153, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>12a</sup> *Fulton v. MacCracken*, 18 Md. 528.

<sup>12b</sup> *Barry v. Crowley*, 4 Gill (Md.) 194.

<sup>12c</sup> *London & River Plate Bank v. Carr*, 54 Misc. Rep. 94, 105 N. Y. Supp. 679.

*"Protest may be made by: (1) A notary public; or (2) by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses."*<sup>13</sup>

In some states the word responsible is substituted for respectable in the law.

In the absence of any custom or usage, the presentment and demand must be made by the notary in person.<sup>13a</sup>

*"When a bill is protested, such protest must be made on the day of its dishonor unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting."*<sup>14</sup>

The protest should be commenced on the day on which acceptance or payment is refused; but it may be drawn up and completed later.

The drawer of a check who has countermanded payment is not entitled to notice of its protest.<sup>14a</sup>

*"A bill must be protested at the place where it is dishonored except that when a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonored, by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary."*<sup>15</sup>

*"A bill which has been protested for non-acceptance may be subsequently protested for non-payment."*<sup>16</sup>

Below is given a form of protest:

#### FORM OF PROTEST.

UNITED STATES OF AMERICA,	} ss.
State of_____	
County of_____	
City of_____	

By this Public Instrument of Protest, be it known: That on this\_\_\_\_\_day of\_\_\_\_\_, in the

<sup>13</sup> Neg. Inst. Law, § 154, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>13a</sup> Ocean National Bank v. Williams, 102 Mass. 141.

<sup>14</sup> Neg. Inst. Law, § 155, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>14a</sup> First National Bank v. Korn, — Mo. App. —, 179 S. W. 721.

<sup>15</sup> Neg. Inst. Law, § 156, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>16</sup> Neg. Inst. Law, § 157, where all cases directly or indirectly bearing upon or citing the Law are grouped.

year of our Lord 19\_\_\_\_, I, a Notary Public in and for the County and State aforesaid by lawful authority duly commissioned and sworn, residing in\_\_\_\_\_, in the County and State aforesaid, at the request of\_\_\_\_\_, holder of the original\_\_\_\_\_, did present the original\_\_\_\_\_, which is hereunto annexed, to\_\_\_\_\_, and did demand\_\_\_\_\_ The said\_\_\_\_\_ did refuse to\_\_\_\_\_ the same (here insert reason, if any, why payment or acceptance was refused).

Whereupon I did protest, and by these presents do publicly and solemnly protest as well against the drawer and indorsers of the said\_\_\_\_\_ as against all others whom it doth or may concern for exchange, re-exchange and all costs, charges, damages and interest heretofore incurred or to be hereafter incurred for want of the\_\_\_\_\_ of the same; and I do hereby certify that on the\_\_\_\_\_ day of\_\_\_\_\_, one thousand nine hundred\_\_\_\_\_, I did give due and written notice, signed by me, of the presentment and protest of the foregoing\_\_\_\_\_ to the respective indorsers of the said instrument, and informing\_\_\_\_\_ that\_\_\_\_\_ held liable for the payment of said\_\_\_\_\_; and on the same day, in the evening, I deposited the same in the postoffice at\_\_\_\_\_, contained in a securely sealed postpaid wrapper, duly directed and subscribed to said\_\_\_\_\_ as follows, to-wit: to\_\_\_\_\_

-----  
The above-named places and addresses being the reputed place of residence and address of the persons to whom such notice was so addressed and the postoffice nearest thereto.

Thus done and protested in the City of\_\_\_\_\_, in the County and State aforesaid, in the presence of\_\_\_\_\_ and\_\_\_\_\_, witnesses.

In testimony whereof, I have hereunto set my hand and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_(SEAL)

Notary Public.

My Commission Expires on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

FEES	}	Registered Vol.____ Page____
Protest _____		
Record _____		
Notices _____		
Postage _____		
Total _____ \$_____		

§ 176. **Protest—Purpose.** The dishonor must be brought to the attention of the person secondarily liable on the instrument. That is, to the indorsers or drawer.

For "*subject to the provisions of this act, when the instrument is dishonored by non-payment an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.*"<sup>17</sup>

By the above section of the law an indorser whose liability has become fixed by demand and notice is, as to the holder, a principal debtor.<sup>17a</sup>

The notice may be made by a notary public.<sup>18</sup> The instrument is presented for payment and payment is refused, then the instrument may be taken by a notary public to the party and the party may state that he refuses to pay it; the notary makes a statement to that effect and attaches his seal, that it has been dishonored, and that he has protested it for non-payment. The notary keeps this or he may send his sworn statement, one copy to one person and one to the other.<sup>19</sup> This is the protest, it is not the notice of protest. The protest is a solemn declaration made by the notary public that the paper has been dishonored.<sup>20</sup> Now, when suit is brought on the paper, it is abso-

<sup>17</sup> Neg. Inst. Law, § 84, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>17a</sup> Pittsburgh-Westmoreland Coal Co. v. Kerr, 220 N. Y. 137, 115 N. E. 465.

<sup>18</sup> Donegan v. Woods, 49 Ala. 242, 20 Am. Rep. 275; Scider v. Brown, 3 McLean (U. S.) 481, 21 Fed. Cas. No. 12,205.

<sup>19</sup> Leftley v. Mills, 4 T. R. 170; Gale v. Walsh, 5 T. R. 170; Rodgers v. Stephens, 2 T. R. 713. As to what facts certificate of notary is evidence, see note 2 U. S. L. Ed. 102.

<sup>20</sup> Swayze v. Britton, 17 Kan. 625. As to protest as sufficient evidence, see note 36 Am. St. Rep. 685.

lutely necessary that proof be shown. So when you come to prove your case as the holder of an instrument you must prove that there has been a protest of the instrument, that it has been presented for payment or acceptance to the person liable and that it has been refused. That is part of your case. And when you come to the trial, this statement of the protest by the notary is a part of your case. It is the same as a deposition. It can go into evidence anywhere and will prove the case just the same as a deposition.

For this certificate is generally accepted as evidence of the facts set forth in its terms, and its production obviates the necessity of proof of these facts by witnesses in open court. The main purpose of the protest, therefore, is to furnish to the holder legal testimony of presentment, demand, and notice of dishonor, to be used in actions against the drawer and indorsers.

And the notary's certificate of protest is only evidence of those facts which are stated therein and which it is the duty of the notary to note in making presentment and demand for payment. Collateral facts noted by the certificate must be proved by other evidence.

A protest certificate is only *prima facie* evidence and all facts stated therein may be disproved by competent evidence showing the statements to be untrue.

**§ 177. Protest—Notice of.** After the notary protests the instrument he sends notice to all the parties on the instrument.<sup>21</sup> He can do this in several ways. He might send it to the person who sent the paper in for collection. Then the notary public would send his notice of protest for the other parties on the instrument, to the last person on the instrument, and he would say, "Notices enclosed herewith to be sent to the other parties." If the holder has sent notice to all the parties, he is entitled to come in and recover because he has performed his contract. He has sent notice to all the parties on the instrument that he intends to recover against them. Now, if the indorsee is D and he has sent notice to all the other indorsers, he can proceed against all or any one of them. C gets the notice and he sends out notices to those who preceded him and that holds them, but they will be held already by the notices sent them by the other man. It is just performing the contract which was entered into in the way a merchant would do it. It is performing the contract

<sup>21</sup> *Tevie v. Randall*, 6 Cal. 632, 65 Am. Dec. 547; *Ban v. Marsh*, 9 Yerg. (Tenn.) 253.

which was entered into originally so that you may come within the terms of the contract.<sup>29</sup>

It is the duty of a bank undertaking the collection of a bill or note to protest the same upon dishonor and give the proper notice. Some jurisdictions hold that the notice must be given to all prior indorsers while others hold that notice need be given only to the collecting bank's immediate indorser or principal. Under the latter view when the principal has received notice the collecting bank is relieved from liability. Thus it is no part of the duty of the collecting bank to forward to an indorsee notice of dishonor received by it from its correspondent, provided its principal received notice of the dishonor, that is, a bank which collects through a correspondent bank must see to it that, at least, its principal is notified.<sup>30</sup>

Below is given a form of notice:

FORM OF NOTICE OF PROTEST.

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss:  
\_\_\_\_\_, 19\_\_  
To \_\_\_\_\_  
\_\_\_\_\_  
You will please take notice that a \_\_\_\_\_ for  
\_\_\_\_\_ dollars, dated \_\_\_\_\_  
payable \_\_\_\_\_ after \_\_\_\_\_ drawn by  
\_\_\_\_\_ in favor of \_\_\_\_\_ on  
\_\_\_\_\_ (accepted by) \_\_\_\_\_ endorsed by  
you and due \_\_\_\_\_ has been protested by me on this  
day for non-\_\_\_\_\_ after having made legal demand  
for the same.  
I hereby, at the request of \_\_\_\_\_, the holder  
thereof, notify you that the said holder looks to you for pay-  
ment, damages, interest and costs as indorser thereof.  
Very respectfully,  
\_\_\_\_\_  
Notary Public.

My Commission Expires on  
the \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_

<sup>29</sup> Lysaght v. Bryant, 9 C. B. 46;  
Smith v. Poillon, 87 N. Y. 590, 41  
Am. Rep. 402; Wilson v. Swaberg,  
1 Stark. 34.

People's National Bank, 263 Pa.  
266, 106 A. 311, 4 A. L. R. 531, 3  
R. C. L. 250 and 622. Note 4 A. L.  
R. 534.

<sup>30</sup> Farmers' National Bank v.



§ 178. **Protest**—What should be protested and what not necessary. As to what should be protested and what is unnecessary to protest the Negotiable Instruments Law has the following provisions:

*"Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange."*<sup>23</sup>

In many states statutes make the certificate of the notary *prima facie* evidence of the facts of presentment, demand, non-payment and notice of dishonor. Therefore, while protest is not required in cases of promissory notes and inland bills, it is usual to protest these instruments also, when dishonored, since the notary's certificate of protest is the most convenient and certain mode of proving the facts.<sup>23a</sup> And under some statutes it has been held *prima facie* evidence that notice was given in compliance with the Negotiable Instruments Law.<sup>23b</sup>

*"Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary."*<sup>24</sup>

A foreign bill must be presented by a notary public, because, from the needs of the case, some act of a universally recognized authority is called for.<sup>25</sup> By force of custom, the official act of the notary public is of recognized authority throughout the world.

Protest by notaries public of a foreign note is unnecessary, unless it is indorsed; but, if indorsed, its protest by a notary public, according to the weight of authority, is required because the indorsement of a note is essentially a bill drawn on the maker.<sup>26</sup>

<sup>23</sup> Neg. Inst. Law, § 118, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to protest of promissory note or inland bill under general law merchant, see note 5 U. S. L. Ed. 228.

<sup>23a</sup> Eaves v. Keeton, — Mo. App. —, 193 S. W. 629.

<sup>23b</sup> Scott v. Brown, 240 Pa. St. 328, 87 A. 431.

<sup>24</sup> Neg. Inst. Law, § 152, where all cases directly or indirectly bearing upon or citing the Law are grouped.

As to protest for non-acceptance, see notes 1 U. S. L. Ed. 640 and 2 U. S. L. Ed. 79.

<sup>25</sup> Commercial Bank v. Barksdale, 36 Mo. 563; Sussex Bank v. Baldwin, 17 N. J. L. 476; Cape Fear Bank v. Stinemetz, 1 Hill (S. C.) 44. As to liability of notary for neglect to protest, and of bank employing him, see note 16 U. S. L. Ed. 466.

<sup>26</sup> Austin v. Rodman, 8 N. C. 194, 9 Am. Dec. 630; Carter v. Union

The convenience of proving the essential facts of dishonor by notarial certificate has caused the enactment in some of the States of statutes requiring or permitting the protesting of inland bills and notes.

**§ 179. Protest—Waiver.** Protest is waived by express or implied waiver of a presentment for payment, and protest is dispensed with by the same circumstances which would dispense with notice of dishonor in the case of an inland bill, and circumstances excusing delay in giving notice of dishonor will excuse delay in protesting.

The Negotiable Instruments Law provides:

*"Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence."*<sup>27</sup>

*"Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only."*<sup>28</sup>

*"A waiver of protest whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor."*<sup>29</sup>

**§ 180. Protest—Miscellaneous matters.** A foreign bill dishonored for non-acceptance must be protested, but when this is done it need not be subsequently protested for non-payment.

Any holder may present the bill or note for payment and receive payment, but in case payment is refused and protest becomes necessary, the notary public who makes the protest is obliged, by law to make a second demand, so that he can of his own personal knowledge certify to the fact of dishonor.<sup>30</sup>

Bank, 7 Humph. (Tenn.) 548, 46 Am. Dec. 671; Carmichael v. Pennsylvania Bank, 4 How. (Miss.) 567, 35 Am. Dec. 408.

<sup>27</sup> Neg. Inst. Law, § 159, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>28</sup> Neg. Inst. Law, § 110, where all cases directly or indirectly bearing upon or citing the Law are grouped.

As to effect of waiver, see note 29 L. R. A. 313.

<sup>29</sup> Neg. Inst. Law, § 111, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>30</sup> Ellis v. Commercial Bank, 7 How. (Miss.) 294, 40 Am. Dec. 63; Chenowith v. Chamberlin, 6 B. Mon. (Ky.) 60, 43 Am. Dec. 145; Donegan v. Wood, 49 Ala. 242, 20 Am. Rep. 275.

A bill must be protested at the place where it is dishonored, but if the domicile and place of payment are different it may be protested at either place.<sup>31</sup>

When the laws are in conflict, the validity of the protest will be determined by the law of the place where it is made.<sup>32</sup>

The notary's minutes made on the bill or note, such as his initials, the date and the like, are made for his convenience, since he by the law merchant is required to make the protest the same day that the presentment and demand were made, and this short form is equivalent to the protest itself, and the more formal protest may be made out later from the minutes.

When the acceptor of a bill becomes bankrupt or makes an assignment before its maturity, it may be protested for better security.<sup>33</sup>

*"Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers."*<sup>34</sup>

*"Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it protest may be made on a copy or written particulars thereof."*<sup>35</sup>

The notary public must present the paper, if you desire to protest it, either for non-payment or non-acceptance.<sup>36</sup>

The custom in some cities is to make two presentments, twice in the same day. If it is not accepted when it is presented in the forenoon it is taken back again in the afternoon and is protested.

As the Negotiable Instruments Law makes no provision as to the damages which may be recovered on foreign bills of exchange, this matter is to be determined by the law merchant under section 196 of the Law or by statute in the different jurisdictions. The damages recoverable by the payee of a negotiable

<sup>31</sup> Grigsby v. Ford, 3 How. (Miss.) 184; Neeley v. Morris, 2 Head. (Tenn.) 595, 75 Am. Dec. 753.

<sup>32</sup> Wooley v. Lyon, 117 Ill. 244, 6 N. E. 885, 57 Am. Rep. 867; Tickner v. Roberts, 11 La. 14, 30 Am. Dec. 706; Carter v. Union Bank, 7 Humph. (Tenn.) 548, 46 Am. Dec. 89.

<sup>33</sup> Neg. Inst. Law, § 158, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>34</sup> Neg. Inst. Law, § 159, where all

cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>35</sup> Neg. Inst. Law, § 160, where all cases directly or indirectly bearing upon or citing the Law are grouped. Hinsdale v. Miles, 5 Conn. 331; Kavanaugh v. Bank, 59 Mo. App. 540.

<sup>36</sup> Ellis v. Commercial Bank, 7 How. (Miss.) 294, 40 Am. Dec. 63; Chenoweth v. Chamberlain, 6 B. Mon. (Ky.) 60, 43 Am. Dec. 145; Donegan v. Wood, 49 Ala. 242, 20 Am. Rep. 275.

foreign bill of exchange protested for non-payment against the drawee may be deemed to be made up as follows: (a) The face of the bill; (b) interest thereon; (c) protest fees; (d) re-exchange, i. e., the additional expense of procuring a new bill for the same amount payable in the same place on the day of dishonor; or a percentage in lieu of such re-exchange in jurisdictions where it is prescribed by statute.<sup>37</sup>

<sup>37</sup> *Pavenstedt v. N. Y. Life Insurance Co.*, 203 N. Y. 91.

## CHAPTER XVII.

### DISCHARGE OF NEGOTIABLE INSTRUMENTS.

- |   |  |
|---|--|
| § 181. In general.                          | § 188. By alteration.  |
| 182. By payment.                            | 189. By the principal debtor becoming the holder in his own right. |
| 183. By payment for honor.                  | 190. By operation of law.  |
| 184. By cancellation and surrender.         | 191. By renunciation of holder.                                    |
| 185. By covenant not to sue.                | 192. When a person secondarily liable, discharged.                 |
| 186. By accord and satisfaction.            |  |
| 187. By substitution of another obligation. |  |

§ 181. In general. Some writers treat this subject under the head of defense while others treat it as the performance of an obligation contracted. It will be treated here largely in the nature of a discharge of a contract.

The Negotiable Instruments Law provides, as follows:

*"A negotiable instrument is discharged,*

1. *By payment in due course by or on behalf of the principal debtor.*

2. *By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.*

3. *By the intentional cancellation thereof by the holder.*

4. *By any other act which will discharge a simple contract for the payment of money.*

(Thus the release of one joint maker will operate to discharge the others.)<sup>a</sup>

5. *When the principal debtor becomes the holder of the instrument at or after maturity in his own right."*<sup>1</sup>

The words "in his own right" exclude the cases where the maker or acceptor acquire the instrument in a purely representative capacity as agent, as executor or in some such capacity.<sup>1a</sup>

The above five provisions of the Law merely designate the acts which discharge the instrument and do not purport to describe

a Case v. Bridger, 133 La. 754, 63 So. 319.

<sup>1</sup> Neg. Inst. Law, § 119, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to part payment by one party

discharging other parties only *pro tanto*, see note 2 U. S. L. Ed. 79.

<sup>1a</sup> Schwartzman v. Post, 94 App. Div. (N. Y.) 474, 87 N. Y. Supp. 872; Peoples State Bank v. Dryden, 91 Kans. 216, 137 P. 928.

the character of proof by which they must be established. A renunciation must therefore be in writing under section 122 of the Law, unless the instrument is delivered up to the party primarily liable thereon.<sup>1b</sup>

§ 182. **By payment.** Negotiable instruments may be discharged by payment.<sup>2</sup> This is the most usual way of perfecting a discharge of the bill or note. The very nature of the word payment indicates that it is a discharge of a contract to pay money by giving to the party entitled to receive it the amount agreed to be paid by one of the parties to the contract. Payment is not a contract but is rather a manner of discharging a contract in which one party has a right to demand a sum of money and in which the other party has a right to receive the money. Then by payment is meant the discharge of a contract to pay money by giving to the party entitled to receive it, the amount agreed to be paid by one of the parties who entered into the agreement.<sup>3</sup> Payment as stated above is not a contract. It is the discharging of a contract in which the party of the first part has a right to demand payment, and the party of the second part has a right to make payment. A sale is altogether different. It is a contract which does not extinguish a bill or note, but continues it in circulation as a valid security against all parties. And it is necessary to constitute a transaction a sale that both parties should expressly or impliedly agree, the one to sell and the other to purchase the paper. Whether the transaction is a purchase or payment is a question for the jury where the facts are in dispute, to be resolved according to the intention of the parties, by looking to the substance of the matter rather than its form. Payment is usually made by the principal debtor and is a complete discharge of the instrument, that is, "*a negotiable instrument is discharged by payment in due course by or on behalf of the principal debtor*"<sup>4</sup> because it is the performance of a contract according to its terms by the person primarily liable. Payment may be made by any other person than the principal debtor. But in order that he may in

<sup>1b</sup> Whitcomb v. National Exchange Bank, 123 Md. 612, 91 A. 689.

<sup>2</sup> Ballard v. Gremburch, 24 Me. 336; Dooley v. Va. Fire & Marine Ins. Co., Fed. Cas. No. 3,999, 3 Hughes (U. S.) 221; Christman v. Harmon, 29 Gratt. 494. As to effect of payment by indorser, see note 14 Am. St. Rep. 794; and as

to necessity of surrender, see note 1 Am. St. Rep. 184; and as to presumption of payment from lapse of time, see 18 Am. St. Rep. 882.

<sup>3</sup> Kendall v. Brownson, 47 N. H. 186; Green v. Hughitt School Tp., 5 S. D. 452, 59 N. W. 224.

<sup>4</sup> Neg. Inst. Law, § 119, where all cases directly or indirectly bearing upon or citing the Law are grouped.

turn recover from the maker it is necessary for him to ascertain whether there has been presentment, protest and notice, because in default of these steps in this particular case the maker would not be liable to him. It is also advisable for him to inform himself as to the identity of the holder and determine as to whether or not he has the legal title to the instrument, "*and payment to him in due course discharges the instrument.*"<sup>5</sup> Payment always discharges the instrument when made to the proper party but it does not discharge all the parties. The principal debtor must pay the amount of the instrument before he is discharged.<sup>6</sup> But it must be understood that not any one who desires may pay the instrument and then recover of the maker. He must be a person who has in some way made himself liable for the payment of the instrument. There is however one exception to this, and that is where an instrument has been protested and some one comes in and makes "payment *supra* protest" or "for honor."

The mere fact that the payee stamps the word "paid" upon the instrument does not constitute payment.<sup>6a</sup>

*"A negotiable instrument is discharged:*

*By payment in due course by the party accommodated where the instrument is made or accepted for accommodation."*<sup>7</sup>

Thus where a note is made for the accommodation of one of the makers and he pays it then it is discharged as to other makers.<sup>7a</sup>

Any party to a bill or note may pay it, and an indorser who has been discharged by failure of notice may still sue a prior indorser or other parties who were not discharged, because, although not compelled to pay it, he acquires the right of the holder from whom he took the instrument, or is remitted to his own rights as indorsee.<sup>8</sup>

A mere stranger to the paper cannot make payment without the consent of the holder unless he represents a party liable thereon, or makes payment *supra* protest.<sup>9</sup> And when one who is

<sup>5</sup> Neg. Inst. Law, § 51, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>6</sup> King v. Hannah, 6 Ill. App. 495; Leeke v. Hancock, 76 Cal. 127, 17 Pac. 937; Mead v. Small, 2 Me. 207, 11 Am. Dec. 62.

<sup>6a</sup> Hanna v. McCrory, 19 N. Mex. 183, 141 P. 996.

<sup>7</sup> Neg. Inst. Law, § 119, subd. 2, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>7a</sup> Comstock v. Buckley, 141 Wis. 228, 124 N. W. 414.

<sup>8</sup> Ellsworth v. Brewer, 11 Pick. 316; Commonwealth Bank v. Floyd, 4 Metc. (Ky.) 159; Meyer v. Spencer, 9 Mo. App. 590; Ticonic Nat. Bank v. Bagley, 68 Me. 249.

But see Turner v. Leech, 4 B. & Ald. 457, 6 E. C. L. 556; Roscow v. Hardy, 2 Campb. 458, 12 East. 434.

<sup>9</sup> Burton v. Slaughter, 26 Gratt. 919.

not a party to negotiable paper pays his money for it and takes up the paper, the presumption is that he has bought it and not paid it off.<sup>9a</sup>

Where some payment is made to the holder of a negotiable note by an indorser in discharge of his obligation as an indorser, it does not enure to the benefit of the maker of the instrument and in an action upon it the maker is liable for the whole amount thereof, notwithstanding the payment. The indorser to the extent of the money paid becomes equitably entitled to be substituted to the rights and remedies of the holder, and becomes, *pro tanto*, the beneficial owner of the debt; so that the maker's obligation to pay the note in full, at first due the holder solely in his own right, becomes, after the part payment by the indorser, still wholly due to the holder, but partly in his own right and partly as trustee for the indorser. A court of law cannot split the note into parts, and must act upon the legal interest and ownership.<sup>9b</sup>

Where payment is made by a party who is not the primary obligor or an accommodation party, his payment only cancels his own liability, and those who are obligated after him. All prior parties, primarily or secondarily liable on the bill, are liable to such a payer, and the payer may cancel indorsements subsequent to his own and reissue the paper, and it will be valid as against the prior parties.

The Negotiable Instruments Law covers this by the following provision:

*"Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:*

1. *Where it is payable to the order of a third person, and has been paid by the drawer; and*
2. *Where it was made or accepted for accommodation, and has been paid by the party accommodated."*<sup>10</sup>

Payment of a bill or note should be made to the legal owner or holder thereof, or some one authorized by him to receive it.<sup>11</sup> If it be payable to bearer or indorsed in blank, any person having

<sup>9a</sup> Cantrell v. Davidson, 180 Mo. App. 410, 168 S. W. 271.

<sup>9b</sup> Madison Square Bank v. Pierce, 137 N. Y. 444.

<sup>10</sup> Neg. Inst. Law, § 121, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>11</sup> Stuart v. Asher, 15 Colo. App. 403, 62 Pac. 1051; Walter v. Logan, 63 Kan. 193, 65 Pac. 225; Chicago etc. Ry. Co. v. Burns, 61 Neb. 793, 86 N. W. 724; Patten v. Fullerton, 27 Me. 58.



it in possession may be presumed to be entitled to receive payment, unless the payer have notice to the contrary; and a payment to such person will be valid, although he may be a thief, finder or fraudulent holder.

*"Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective."*<sup>13</sup>

The maker of a note or the acceptor of a bill must satisfy himself, when it is presented for payment, that the holder traces his title through genuine indorsements; for if there is a forged indorsement it is a nullity and no right passes by it.<sup>13</sup>

The party making payment should insist on the presentment of the paper by the party demanding payment, in order to make sure that it is at the time in his possession, and not outstanding in another. And if at the time he makes payment it is outstanding, and held by a *bona fide* holder for value, he will be liable to pay it again, and a receipt taken will be no protection. The party making payment of the bill or note should also not fail to insist upon its being surrendered up, as a voucher that the party receiving the money was entitled to do so and also that he has paid it to him.

The party bound to make payment has no right to do so in any other medium than that expressed on the face of the instrument—that is, he must make payment in money.<sup>14</sup>

When payment of a bill or note is made by giving another note or bill,—other than notes treated as legal tender,—as a general rule, such payment will not be considered absolute until the paper given in payment has been itself paid, except where the parties expressly or impliedly agree that the claim shall be discharged by such payment.<sup>15</sup>

A distinction is made by some authorities when the payer gives his own note in payment and when he gives the note or bill of another. In the first instance it is usually treated as a conditional payment.<sup>16</sup> When a stranger's note is given in pay-

<sup>13</sup> Neg. Inst. Law, § 88, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>13</sup> Harter v. Mechanics Nat. Bank, 63 N. J. L. 578, 44 Atl. 715, 76 Am. St. Rep. 224; Tolman v. Am. Nat. Bank, 22 R. I. 462, 48 Atl. 480, 84 Am. St. Rep. 850, 52 L. R. A. 877; Lane v. Nuffer, 5 N. Y. S. 421, 25 N. Y. St. 823.

<sup>14</sup> Galena Ins. Co. v. Kupfer, 28 Ill. 332, 81 Am. Dec. 284; Graydon

v. Patterson, 13 La. 256, 81 Am. Dec. 432; Klauber v. Biggerstaff, 47 Wis. 551, 3 N. W. 357, 32 Am. Rep. 773; Williamson v. Smith, 1 Coldw. (Tenn.) 1, 78 Am. Dec. 478.

<sup>15</sup> Stanley v. McElrath, 86 Cal. 449, 25 Pac. 16, 10 L. R. A. 545; Granite Nat. Bank v. Firch, 145 Mass. 567, 14 N. E. 650, 1 Am. St. Rep. 484; Cadiz Bank v. Slemmons, 34 Ohio St. 142, 32 Am. Rep. 364.

<sup>16</sup> Winsted Bank v. Webb, 39 N.

ment for a precedent debt it is also generally treated as a conditional payment.<sup>17</sup> but if given in satisfaction of a contemporaneous debt it is held to be an absolute payment if so transferred as to end the transferrer's liability thereon, that is, without indorsement.<sup>18</sup>

A new bill or note given in renewal of an old one retained by the payee is also held to constitute but a suspension of the old one until the new one is paid.

The conditional payment operates to suspend the right of action on the original paper until the paper taken in payment falls due, then the holder can sue, at his election, on either of the obligations.<sup>19</sup>

A part payment of a bill or note which has fallen due only extinguishes it *pro tanto*, and an agreement that it shall be in full discharge of the debt does not make such part payment any more effectual as to the residue, there being no sufficient consideration for the discharge of the whole.<sup>20</sup> But any agreement by way of compromise or composition, into which any new element entered, would be sustained, and if the claim were disputed, agreement to receive part payment in full would discharge it.<sup>21</sup>

§ 183. By payment for honor. "*Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.*"<sup>22</sup>

"*The payment for honor supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.*"<sup>23</sup>

Y. 325, 100 Am. Dec. 435; Nightingale v. Chafee, 11 R. I. 609, 23 Am. Rep. 531; Scott v. Gilkey, 153 Ill. 168, 39 N. E. 265.

<sup>17</sup> Gibson v. Tobey, 46 N. Y. 637, 7 Am. Rep. 397; Tilford v. Miller, 84 Ind. 185.

<sup>18</sup> Tobey v. Barber, 5 Johns. 68, 4 Am. Dec. 326; Day v. Kinney, 131 Mass. 37; Susquehanna Fert. Co. v. White, 66 Md. 444, 7 Atl. 802.

<sup>19</sup> Henry v. Conley, 48 Ark. 271, 33 S. W. 181; Geib v. Reynolds. 35 Minn. 331, 28 N. W. 923; East River Bank v. Butterworth, 45 Barb. (N. Y.) 476.

<sup>20</sup> Hart v. Freeman, 42 Ala. 567;

Mordecai v. Stewart, 36 Ga. 126; *In re Weeks*, 8 Ben. (U. S.) 269, 29 Fed. Cas. No. 17,349.

<sup>21</sup> Coburn v. Ware, 25 Me. 330; Robbins v. Cheek, 32 Ind. 328, 2 Am. Rep. 348; Price v. Cannon, 3 Mo. 453.

<sup>22</sup> Neg. Inst. Law, § 171, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to payment for honor in general, see note 7 U. S. L. Ed. 132.

<sup>23</sup> Neg. Inst. Law, § 172, where all cases directly or indirectly bearing upon or citing the Law are grouped.

*"The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays."*<sup>24</sup>

*"Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference."*<sup>25</sup>

*"Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter."*<sup>26</sup>

*"Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment."*<sup>27</sup>

*"The payer for honor, on payment to the holder of the amount of the bill and the notarial expenses, incidental to its dishonor, is entitled to receive both the bill itself and the protest."*<sup>28</sup>

§ 184. By cancellation and surrender. The second method by which an instrument may be discharged is by cancellation and surrender. Where the person who is entitled to receive payment delivers up the instrument which he holds against another with the intent and for the purpose of discharging the debt, this surrender operates as a release and discharge of the liability thereon in the absence of fraud or mistake. It is set out in the Negotiable Instruments Law that:

*"A negotiable instrument is discharged by the intentional cancellation thereof by the holder."*<sup>29</sup>

Thus where the payee of a note tears it up, with the intention of destroying and cancelling it, this is a discharge of the note.<sup>30</sup>

No consideration is necessary to support such a transaction after it has been executed.<sup>31</sup> Where the return or surrender of

<sup>24</sup> Neg. Inst. Law, § 173, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>25</sup> Neg. Inst. Law, § 174, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>26</sup> Neg. Inst. Law, § 175, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>27</sup> Neg. Inst. Law, § 176, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>28</sup> Neg. Inst. Law, § 177, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>29</sup> Neg. Inst. Law, § 119, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>30a</sup> *Montgomery v. Schwald*, 177 Mo. App. 75, 166 S. W. 831.

<sup>31</sup> *Hale v. Rice*, 124 Mass. 292; *Booth v. Smith*, 3 Woods (U. S.) 19, 2 Fed. Cas. No. 1,649; *Ellsworth v. Fogg*, 35 Vt. 355.

See *in re Campbell*, 7 Pa. St. 100, 47 Am. Dec. 503.

a note is induced by fraud,<sup>31</sup> the maker is not released from liability thereon; and where a note has been surrendered by mistake<sup>32</sup> upon the supposition that it was fully paid, the maker will remain liable for the balance still unpaid. The holder may waive his right to payment by cancellation. Cancellation of an instrument may be made by destroying it or by any other means by which the intention to cancel the instrument may be evidenced.<sup>33</sup>

*"A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority."*<sup>34</sup>

Cancellation may be made before maturity, but in order to be effective in such case against a *bona fide* holder it must carry notice to him of such cancellation upon its face.<sup>35</sup>

**§ 185. By covenant not to sue.** The maker or acceptor may be discharged from the payment of the instrument by a general covenant not to sue, and, of course, if the maker is discharged, the indorsers will also be discharged.<sup>36</sup>

Such a covenant is a discharge of the instrument as to these parties, but such a covenant will not discharge another who is jointly liable with the covenantee. If the covenant is given by one of two creditors it will not operate as a release or a discharge of the instrument.<sup>37</sup> A covenant not to sue for a limited time will not discharge the instrument as between the parties, but it does release the sureties.<sup>38</sup>

**§ 186. By accord and satisfaction.** In considering the question of accord and satisfaction a distinction should be made be-

<sup>31</sup> Findley v. Cowles, 93 Ia. 389, 61 N. W. 998; Liesemer v. Burg, 106 Mich. 124, 63 N. W. 999; Reynolds v. French, 8 Vt. 85, 30 Am. Dec. 456.

<sup>32</sup> Mfg. Nat. Bank v. Thompson, 129 Mass. 438, 37 Am. Rep. 376; Blodgett v. Bickford, 30 Vt. 731, 73 Am. Dec. 334.

<sup>33</sup> Booth v. Smith, 3 Woods (U. S.) 19, 2 Fed. Cas. No. 1,649; Blade v. Noland, 12 Wend. (N. Y.) 173.

<sup>34</sup> Neg. Inst. Law, § 123, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>35</sup> Dod v. Edwards, 2 Car. & P. 602; Morley v. Culverwell, 7 Mees. & W. 174.

<sup>36</sup> Gordon v. Third Nat. Bank, 144 U. S. 97, 36 L. Ed. 360; Hall v. Capitol Bank of Macon, 71 Ga. 715; Scott v. Saffold, 37 Ga. 384; Mc-Lemore v. Powell, 12 Wheat. (U. S.) 554.

<sup>37</sup> Williams v. Scott, 83 Ind. 405.

<sup>38</sup> Hine v. Bailey, 16 Ia. 213, 35 Am. Dec. 214; Hamilton v. Prowdy, 50 Wis. 592, 7N. W. 659, 36 Am. Rep. 866; Okie v. Spencer, 2 Whart. 253, 30 Am. Dec. 251.

tween an extinguishment and a satisfaction of a bill or note. This has been very clearly stated by Justice Story in the following words: "Taking a security of a higher description, such as a bond or judgment, will extinguish the claim of the holder upon the note against the party given the security; but it will not amount to a satisfaction thereof, so as to discharge the other parties upon the note."<sup>39</sup> Any person to whom the maker is liable on an instrument who makes an agreement with the maker not to sue has caused the instrument to be extinguished as to himself, but there is no satisfaction as to the other parties to the note.<sup>40</sup> Whatever the payee of the instrument receives from the maker in full satisfaction of his claim is a satisfaction as to all other parties who might have been held liable.<sup>41</sup> Where the debt or demand is liquidated, that is, where it is a sum certain, the payment of a less sum by the debtor and a receipt therefor by the creditor is not an accord and satisfaction of the debt, although the creditor agrees to accept it as such.<sup>42</sup> Such would not be the case, however, if the sum was in dispute or was an unliquidated sum.

§ 187. **By substitution of another obligation.** A bill of exchange or promissory note may be discharged by the substitution of a new obligation for the pre-existing one.<sup>43</sup> Some writers treat this subject under the head of novation. In these cases the extinguishment of the old debt is sufficient consideration for the new obligation. It is essential that the new obligation be such as may legally take place in order that it may extinguish or discharge the prior obligation. There may be a sufficient consideration and competent parties to the substitution obligation, but if the new obligation is one which cannot legally take place the prior instrument is not discharged.<sup>44</sup> It is permissible at any time before the contract of substitution is complete, for the parties to withdraw from the arrangement, but after such completion, none of them, without the consent of all the others, may withdraw from or rescind or in any way modify the new contract existing between them. The entire doctrine of substi-

<sup>39</sup> Story on Promissory Notes, § 409; *Tradesmen's Nat. Bank v. Looney*, 99 Tenn. 278, 42 S. W. 149, 38 L. R. A. 837.

<sup>40</sup> *Dean v. Newhall*, 8 T. R. (Eng.) 168; *Fowell v. Forrest*, 2 Saund. (Eng.) 47n.

<sup>41</sup> Story on Promissory Notes, § 402.

<sup>42</sup> *People v. Hamilton County*, 56

Hun 459, 10 N. Y. S. 88; *Hart v. Freeman*, 42 Ala. 567; *Mordecai v. Stewart*, 36 Ga. 126.

<sup>43</sup> *McDonnell v. Ala. Gold Life Ins. Co.*, 85 Ala. 401, 5 So. 120. Note 10 L. R. A. 369; Note 5 L. R. A. 414.

<sup>44</sup> *Henry v. Nubert* (Tenn.), 35 S. W. 44; *Pope v. Vajen*, 121 Ind. 317, 22 N. E. 308, 6 L. R. A. 688.

tution and the legal effect thereof depend upon the agreement between the parties and is governed by the general laws of contracts.

**§ 188. By alteration.** The general rule as to whether or not the alteration of a bill or note will operate as a discharge of the instrument depends upon the effect produced upon the instrument by such alteration. If the alteration is immaterial it is held not to be a discharge, while, if it is a material alteration it is held to be a discharge of the instrument as to all the parties liable except as to the party who has himself made, authorized or assented to the alteration.

*"Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor."*<sup>45</sup>

*"Any alteration which changes: (1) The date; (2) the sum payable either for principal or interest; (3) the time or place of payment; (4) the number or the relations of the parties; (5) the medium or currency in which payment is to be made; or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration."*<sup>46</sup>

If the alteration is made before the delivery of the instrument it will not operate as a discharge of it. If a person after full knowledge of an alteration unconditionally promises to pay the instrument, it is considered a sufficient ratification and will not be construed as a discharge of the instrument to this particular party.<sup>47</sup> Where the alteration is made by a stranger to the instrument the rights of the parties are not affected and there is not sufficient ground for a discharge.<sup>48</sup>

**§ 189. By the principal debtor becoming the holder in due course.** The instrument is discharged if, when it matures, the acceptor or maker is or becomes the holder, since the right to

<sup>45</sup> Neg. Inst. Law, § 124, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>46</sup> Neg. Inst. Law, § 125, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>47</sup> Canon v. Grigsby, 116 Ill. 151, 5 N. E. 362; Bell v. Makin, 69 Ia. 408, 29 N. W. 331; Camden Bank v. Hall, 14 N. J. L. 583.

<sup>48</sup> Paterson v. Higgins, 5 Ill. App. 268; Piersol v. Grimes, 30 Ind. 129; White Sewing Machine Co. v. Dakin, 86 Mich. 581, 49 N. W. 583.

recovery upon the instrument and the liability to pay the instrument are coincident in one and the same person. In order that payment or coincidence of right and liability should operate as a discharge, it is essential that the instrument should have matured. "*A negotiable instrument is discharged when the principal debtor becomes holder of the instrument at or after maturity in his own right.*"<sup>49</sup> An acceptor or maker may acquire it before maturity, as purchaser, and may then further negotiate it. The possession of a bill of exchange by the acceptor after it has been in circulation is *prima facie* evidence that it has been paid by him.<sup>49a</sup> And the possession of a promissory note by the maker is *prima facie* evidence that it has been paid by him.<sup>49b</sup> But where he admits the execution of the note, the burden of showing payment is on him.<sup>49c</sup>

§ 190. By operation of law. An instrument may be discharged by operation of law. If a judgment is obtained on a bill or note, the bill or note is thereby extinguished and merged in the judgment.<sup>50</sup> The judgment alone, without actual satisfaction, is no extinguishment as between the plaintiff and other parties not jointly liable with the original defendant, whether those parties be prior or subsequent to the defendant.<sup>51</sup> The issuing of execution against the person or property of one party to a negotiable instrument does not extinguish the plaintiff's remedy against the other parties.<sup>52</sup> The intermarriage of the maker of a note with the payee or holder formerly discharged the maker from all liability thereon,<sup>53</sup> but this rule has now been changed by statute in most jurisdictions. A discharge in bankruptcy, unless, otherwise provided by statute, releases a bankrupt from all his provable debts, and therefore will discharge the bankrupt, on all bills accepted, or notes made by him, but will not discharge the other parties.<sup>54</sup>

<sup>49</sup> Neg. Inst. Law, § 119, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>49a</sup> Baring v. Clark, 19 Pick. 220.

<sup>49b</sup> Perez v. Bank of Key West, 36 Fla. 467.

<sup>49c</sup> Swan v. Carawan, 168 N. C. 472, 84 S. E. 699.

<sup>50</sup> Claxton v. Swift, 2 Show. (Eng.) 441; Norris v. Aylett, 2 Campb. (Eng.) 329.

<sup>51</sup> Claxton v. Swift, 2 Show. (Eng.) 441.

<sup>52</sup> Porter v. Ingraham, 10 Mass. 88; Hayling v. Mulhall, 2 W. Bl. (Eng.) 1235.

<sup>53</sup> Curtis v. Brooks, 37 Barb. (N. Y.) 476.

<sup>54</sup> Dean v. Justice's Munic. Ct., 173 Mass. 453, 53 N. E. 693, 2 Am. B. R. 163.

§ 191. By renunciation by holder. The Negotiable Instruments Law provides that:

*"The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor, made at or after the maturity of the instrument, discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon."*<sup>55</sup>

§ 192. When a person secondarily liable discharged. "A person secondarily liable on the instrument is discharged:

*"By any act which discharges the instrument;*

*"By the intentional cancellation of his signature by the holder;*

*"By the discharge of a prior party;*

*"By a valid tender of payment made by a prior party;*

*"By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;*

*"By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved."*<sup>56</sup>

Certain changes have been made in the above section of the law in some of the states. In Illinois subdivision three is omitted; at the end of subdivision five the following is added: "or unless the principal debtor be an accommodating party;" and subdivision six reads: "By an agreement in favor of the principal debtor binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent prior or subsequent of the party secondarily liable or unless the right of recourse against such party is expressly reserved, or unless the principal debtor be an accommodating party." In Maryland and New York the words "unless made with the assent of the party secondarily liable, or" are omitted in subsection 6. In Missouri the words "except when such discharge is had in bankruptcy proceedings," are added at the end of subdivision three. In Wisconsin the words "or unless he is fully indemnified," are added at the end of the section; and

<sup>55</sup> Neg. Inst. Law, § 122, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>56</sup> Neg. Inst. Law, § 120, where all cases directly or indirectly bearing upon or citing the Law are grouped.



a new subdivision numbered 4a, is interpolated, as follows "By giving up or applying to other purposes collateral security applicable to the debt, or, there being in the holder's hands or within his control, the means of complete or partial satisfaction, the same are applied to other purposes."

## CHAPTER XVIII.

### CONFLICT OF LAWS, OR WHAT LAW GOVERNS.

- |   |   |
|---|---|
| § 193. In general.                                  | 197. As to liability of indorser.                       |
| 194. As to validity, interpretation and effect.     | § 198. As to presentment, protest and notice.           |
| 194a. As to capacity.                               | 199. Rule in federal courts.                            |
| 195. As to liability of maker, drawer and acceptor. | 199a. Damages upon dishonor of foreign bills.           |
| 196. As to payment, interest and damages.           | 199b. Date at which rate of exchange should be applied. |

§ 193. In general. Suppose a note is made in Pennsylvania, payable in Ohio, indorsed in Kentucky, and suit is brought upon it in Illinois; and suppose each of these states has a different law, which law will govern?

As a general rule if the instrument is made in one state to be performed in another its negotiability will be governed by the laws of the state in which it is to be performed.<sup>1</sup> The formalities essential to the validity of a contract and the interpretation thereof and the matter as to the capacity of the parties are by the weight of authority to be governed by the laws of the country where it is made. Suppose a note is made in one jurisdiction and suit brought in another jurisdiction, what rule governs as to the bringing of the suit? The law of the latter state. A man cannot come from another state and sue on a note under that state's method of procedure, but must proceed according to the law in the place where he sues. All matters respecting the remedy to be pursued including the bringing of suits, service of process, and admissibility of evidence, depend upon the law of the place where the action is brought.<sup>2</sup>

In some states in order for a note to be negotiable by the law merchant it must be payable at a bank. Now suppose some one gets such a note in another state where such is not the law and

<sup>1</sup> *National Bank of America v. Indiana Banking Co.*, 114 Ill. 483, 2 N. E. 401; *Shae etc. National Bank v. Wood*, 142 Mass. 563, 8 N. E. 753. See note 61 L. R. A. 193. As to where taxable, see note 2 L.

R. A. 801, and as to situs for purposes of administration, see note 24 L. R. A. 689.

<sup>2</sup> *Garrigue v. Kellar*, 164 Ind. 676.

he endeavors to recover upon that note. In order to show the law of that state he must introduce the special statute, because the court would presume that the common law prevailed. In order to show that the formalities were different in that state from what they are in another state, that special statute would have to be produced and introduced in evidence in another state to prove that, and if it is not introduced in evidence, then the common law would prevail.<sup>3</sup> In order to have the statute to govern, the statute must be produced in another state to make it supersede the common law there, for if a note is executed in one state and suit is brought on it in another state, in the absence of the statute of the first state being pleaded, the common law prevails.

If a bill on its face is an inland bill, the fact that it was actually drawn and delivered in a foreign state will not divest it of its inland character. The principle is that it is competent for the parties to provide, by agreement, that it shall be governed by the laws of any particular state or country.<sup>3a</sup>

**§ 194. As to validity, interpretation and effect.** The validity of a bill or note as regards requisites in form is determined by the law of the place of its issue.<sup>4</sup> As a negotiable instrument is not binding upon the parties until it is delivered, the place of contract is, therefore, the place where the instrument is delivered and not where it is written, dated and signed.<sup>5</sup> But in the absence of evidence to the contrary it will be presumed that the instrument was executed and delivered at the place where it bears date.<sup>6</sup> Where the instrument specifies a place of payment in a different state from that in which it was executed and delivered it is governed by the laws of the state in which it is made payable as to its execution.<sup>7</sup>

The question of the negotiability of a bill or note is to be determined by the law of the state where it is made payable. A note payable generally and negotiable in the state where executed will be governed by the law of that state in case suit is brought there on the note after it has been indorsed in another state

<sup>3</sup> Whidden v. Seelye, 40 Me. 247; Hunt v. Adams, 44 N. Y. 27; Francis v. Ocean Ins. Co., 6 Cow. (N. Y.) 404; Mason v. Dousay, 35 Ill. 424, 85 Am. Dec. 368.

<sup>3a</sup> As to state statutes declaring contracts executed by foreign corporations void under certain conditions see cases cited under § 60, Neg. Inst. Law.

<sup>4</sup> Austed v. Sutter, 30 Ill. 164; Ford v. Buckeye Ins. Co., 6 Bush. 133. See also note 3 U. S. L. Ed. 205.

<sup>5</sup> Freese v. Brownell, 35 N. J. L. 286; Bell v. Packard, 69 Me. 105.

<sup>6</sup> Lernig v. Ralston, 23 Pa. St. 139.

<sup>7</sup> Stricker v. Tinkham, 35 Ga. 176.

where it is not negotiable. But it has been held that when a note is executed in one state and made payable in another that it will be governed, for the purposes of negotiability by the law of the state where payable.

Some jurisdictions state the rule to be that every contract as to its validity, nature, interpretation and effect—the right, in contradistinction to the remedy—is governed by the law of the place where made, unless to be performed in another place when it is governed by the law of the place of performance.<sup>7a</sup>

**§ 194a. As to capacity.** As a general rule the capacity of the parties is, with some few exceptions, determined by the law of the place with reference to which the contract is made.

There is a conflict among the authorities, however, when the instrument is made in one state and is to be performed in another state. Some jurisdictions hold that when parties make contracts which upon their face are to be discharged in a state other than that in which they are executed, they are presumed, in the absence of anything to the contrary, to have intended the law of the state of performance, the *lex loci solutionis*, to control, and thus, if intention can do so, to have voluntarily constituted the law of that state the law of the contract, or, the governing law;<sup>7b</sup> and matters connected with the performance of the contract are regulated by the law prevailing at the place of performance.<sup>7c</sup>

The question as to capacity, where there is a conflict of laws, has often arisen as to the disability of coverture. In jurisdictions holding that the law prevailing at the place of performance controls it is stated that the disability of coverture arising from the law of the married woman's domicile does not follow her into other states, and where she goes into another state, and makes a contract valid by and to be performed in accordance with the laws of such state, she will be bound thereby, and such contract will be enforced wherever suit is brought, even in the state of her domicile, subject only to exception on ground of public policy in states where married women are totally incapacitated to contract.<sup>7d</sup> In other jurisdictions it is held that questions pertaining to the capacity of the party are determined by the *lex loci contractus*, that is, the law of the state where it was executed and not by that of the state wherein it is payable.<sup>7e</sup>

<sup>7a</sup> Poole v. Perkins, — Va. —  
101 S. E. 240.

<sup>7b</sup> Poole v. Perkins, *supra*.

<sup>7c</sup> Scudder v. Union Nat. Bank,

91 U. S. 1106, 23 L. Ed. 245,

<sup>7d</sup> Poole v. Perkins, *supra*.

<sup>7e</sup> Garrigan v. Kellar, 164 Ind.  
676, 74 N. E. 523, 67 L. R. A. 870,  
108 Am. St. Rep. 324,

In jurisdictions which maintain the view that the formal validity of the contract or the capacity of the parties is determined not by the place of performance but by the place of contract it is stated that where a contract is made in one state and, by its terms provides for its performance in another, and the laws of the two states differ, no fixed rule can be announced by which it can be determined in every case which law shall apply. Where the parties have manifested an intention in good faith to make their contract subject to the laws of one or the other of such states such intention will be given effect in construing the contract and determining the reciprocal rights and duties of the parties thereunder; but if the question to be decided relates to the capacity of the parties such question is to be determined in accordance with the *lex loci contractus* without regard to the intention of the parties.<sup>71</sup>

**§ 195. As to liability of maker, drawer and acceptor.** The obligation of the maker of a note is governed by the law of the place where the note is made or to be performed.<sup>8</sup> If a negotiable note is made in one state and payable there, and it is afterwards indorsed in another state, and by the law of the former, equitable defenses are let in, in favor of the maker, and by the latter excluded, what rule is to govern as to the holder? The answer is, the law of the place where the note was made; for there the maker undertook to pay; and the subsequent negotiation did not change his obligation or right.<sup>9</sup> The contract of the drawer of a bill of exchange is governed by the law of the place where the bill is drawn,<sup>10</sup> in regard to the rights of the payee and any subsequent holder, and not by the law of the place where accepted. This is so since the contract of the drawer is to pay the bill in the place where it is drawn, in case of the failure of the drawee to accept it, and not to pay it at the place where the drawee resides. The liability of an acceptor of a bill of exchange is governed by the law of the place of his acceptance,<sup>11</sup> as to the drawer, payee, and each subsequent holder, provided payment is to be made in the state where the acceptance was made.

**§ 196. As to payment, interest and damages.** The obligation of the maker to pay and that of the acceptor to accept is

<sup>71</sup>2 Wharton, Conflict of Laws (3rd Ed.), secs. 427e-427n. Scudder v. Union Nat. Bank, *supra*.

<sup>8</sup>Lawrence v. Bassett, 5 Allen 140; Wilson v. Lazier, 11 Gratt. 482.

<sup>9</sup>Raymond v. Holmes, 11 Tex. 60.

<sup>10</sup>Bank of U. S. v. U. S., 2 How. 711, 11 L. Ed. 439; Raymond v. Holmes, 11 Tex. 55.

<sup>11</sup>Bissell v. Lewis, 4 Mich. 459.

governed by the law of the place of performance. Therefore the rate of interest will likewise be governed by the same law. And if the different parties to the instrument reside in different jurisdictions the law of the place where each is required to perform his obligation will govern.<sup>12</sup> In respect to interest, the maker of a note or the acceptor of a bill has a right to elect whether the legality of the rate shall be determined by the law of the place of payment, or of the place of execution. If a rate of interest is expressly provided for, which is usurious according to the law of the place of execution, and lawful according to the law of the place of payment, or vice versa, it will be lawful interest, and may be recovered anywhere, even in the place where the rate is declared to be usurious.<sup>13</sup> But if the provision of the law, which applies in the determination of the legality and rate of interest and damages, is not established by proper testimony, the law of the place where suit is brought will govern.<sup>14</sup>

The rate of interest payable as damages is determined by the law of the place of performance; thus, in case of the acceptor or maker where the instrument is payable; and in case of the drawer and indorser, where the contract of indemnity is to be performed, that is, at the place of drawing and indorsing.

§ 197. **As to liability of indorser.** The liability of the indorser is said to be governed by the law of the place where the indorsement is made.<sup>15</sup> It is the new liability created by the indorsement in favor of the indorsee and subsequent indorsers that causes this law to govern. This law governs only as to the new liability created between the indorsee or subsequent indorsers and the prior indorsers. The rights of the transferee or indorsee against the original parties to the instrument are determined by the law of the place where the contract was made or is to be performed. Each successive holder of a commercial instrument has the same rights against the acceptor or maker, it matters not where the transfer was made.<sup>16</sup> These rights are determined by the *lex loci contractus vel solutionis*. The law of the forum determines always in whose name the suit may be brought, and to that extent governs the determination of the title of the indorsee.<sup>17</sup>

<sup>12</sup> Schofield v. Day, 20 Johns. 102; Summers v. Mills, 21 Tex. 77.

<sup>13</sup> Richards v. Globe Bank, 12 Wis. 692; Potter v. Tallman, 35 Bash. 182.

<sup>14</sup> Wood v. Cerl, 4 Met. 203; Aymer v. Sheldon, 12 Wend. 221.

<sup>15</sup> Lee v. Selleck, 33 N. Y. 615; Canton v. Barnes, 50 Ala. 403. See note 61 L. R. A. 212, 222.

<sup>16</sup> Robertson v. Burdekin, 1 Ross. Lead. Cas. 812.

<sup>17</sup> Walsh v. Dart, 12 Wis. 635.

§ 198. **As to presentment, protest and notice.** The required formalities in respect to presentment are determined by the law of the place of acceptance or payment or, as sometimes called, the law of the place of performance.<sup>18</sup> Thus where a draft is drawn in the state of A, by one residing there, upon a person residing in the state of B, any legal question in reference to presentation and demand for payment is to be determined by the laws of the state of B.<sup>18a</sup> This needs no explanation, as no other law could govern as to presentment except the law of the place of performance. The law of the place of payment governs as to the requirements in respect to protest.<sup>19</sup> If a bill is protested for non-acceptance the law of the state where the bill was presented for acceptance will govern, while if it is presented for non-payment the law of the place of payment will govern. The necessity of making a demand and protest, and the circumstances under which the same may be required or dispensed with, are incidents of the original contract which are governed by the law of the place where the bill is drawn, rather than the place where it is payable.<sup>19a</sup> The authorities are divided as to what law governs the requirements in respect to notice, but the weight of American decision is to the effect that the notice must conform to the law of the place where the contract of the maker or indorser is to be performed.<sup>20</sup>

§ 199. **Rule in federal courts.** In the courts of the United States, the decisions are in general in conformity with those of the state courts of last resort in respect to the liability of parties to bills and notes, but not uniformly.<sup>21</sup> In a late case a federal court held that where a question is governed by a Negotiable Instruments Law adopted by the state the federal court is bound to give force and effect to the statute if applicable.<sup>21a</sup> Where any controversy arises as to the liability of a party to a bill of exchange, promissory note, or other negotiable paper, in one of the federal courts of the United States, which is not determined by the positive words of a state statute, or by its meaning as construed by the state courts, the federal courts will apply to its so-

<sup>18</sup> *Todd v. Neal's Admr.*, 49 Ala. 266.

<sup>18a</sup> *Sylvester v. Crohan*, 138 N. Y. 494.

<sup>19</sup> *Raymond v. Holmes*, 11 Tex. 54.

<sup>19a</sup> *Amsick v. Rogers*, 189 N. Y. 258.

<sup>20</sup> *Lee v. Selleck*, 33 N. Y. 32; *Williams v. Putnam*, 14 N. H. 543.

<sup>21</sup> *Moses v. Laurence Co. Nat Bank*, 149 U. S. 298, 13 S. Ct. 900 37 L. Ed. 743; *Burgess v. Seligman*, 107 U. S. 20-33, 2 S. Ct. 10, 27 L. Ed. 359.

<sup>21a</sup> *Smith v. Nelson Land and Cattle Company*, 212 Fed. Rep. 56, 122 C. C. A. 512.

lution the general principles of the law merchant, regardless of any local decision.<sup>22</sup>

**§ 199a. Damages upon dishonor of foreign bills.** In some jurisdictions the statutes provide the amount of damages which may be recovered upon foreign bills upon their dishonor. These statutes often provide that said rules do not apply to promissory notes discounted by a bank and protested for non-payment.

These statutes ordinarily provide that damages payable on protest for non-payment or non-acceptance of a bill of exchange drawn or negotiated within the state, shall be, if drawn upon any person at any place out of the state but within the United States, 5% on the principal of the bill and that beyond such damages no interest or charges accruing prior to protest shall be allowed but interest from the date of protest may be recovered; and when such bills are payable within the United States the rate of exchange shall not be taken into account. These statutes usually further provide that no damages beyond cost of protest shall be chargeable against the drawer or indorser if upon notice of protest and demand of the principal sum the same is paid, and that no holder of a bill of exchange shall recover damages thereon if he has not given a valuable consideration for the same or have some interest thereunder; and that on any bill drawn or negotiated in the state and payable at any place without the state, or in regard to which it shall appear that it was not to be presented for acceptance or payment at that place, if means were provided for its discharge within the state, that no damages or charges for protest shall be allowed.

**§ 199b. Date at which rate of exchange should be applied.** Whenever money is due in a foreign country it becomes necessary to determine its equivalent in domestic currency. The question arises as to whether or not it should be at the date of the breach or the date of the judgment. The date of the breach has been adopted in England.<sup>23</sup> And the late American decisions point in the same direction.<sup>24</sup>

<sup>22</sup> *Swift v. Tyson*, 16 Pet. 1; see *Hughes (W. T.) Prac.* 1214, for full statement and bibliography; *Brooklyn City, etc. Railroad Co. v. Nat. Bank*, 102 U. S. 14, 26 L. Ed. 61.

<sup>23</sup> *Scott v. Bevan*, 2 B. & Ad. 78.

<sup>24</sup> *Simonoff v. Granite City National Bank*, 279 Ill. 248, 116 N. E. 636; *Pavenstedt v. New York Life Ins. Co.*, 203 N. Y. 91, 96 N. E. 104.



## CHAPTER XIX.

### SUBDIVISION A—CHECKS.

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| <p>§ 200. Check defined and distinguished from bill of exchange.</p> <p>201. The formalities of a check.</p> <p>202. Presentment of a check for payment.</p> <p>203. Certification of check.</p> <p>204. Forgery and alteration of check.</p> <p>205. Memorandum check.</p> <p>206. Stale check.</p> <p>206a. Cashier's check.</p> <p>206b. Paid or cancelled check.</p> | <p>§ 206c. Crossed check.</p> <p>206d. Fraudulent check.</p> <p>206e. Stolen checks or stolen negotiable securities.</p> <p>206f. Check as payment.</p> <p>206g. Stopping payment.</p> <p>207. Checkholder's right to sue the bank.</p> <p>208. The depositor's right to draw on the bank.</p> <p>209. Failure of bank to honor check.</p> |
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§ 200. Check defined and distinguished from bill of exchange. The Negotiable Instruments Law defines a check as follows: "*A check is a bill of exchange drawn on a bank, payable on demand.*" To this definition is added the following provision: "*Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.*"<sup>1</sup>

In other words a check is a commercial instrument which is in the form and nature of an inland bill of exchange, payable on demand.<sup>2</sup>

A check unlike a bill of exchange, is always drawn upon a bank or banker and is always payable on demand without days of grace.<sup>3</sup> It is not necessary that a check be presented for acceptance as in case of a bill of exchange.<sup>4</sup> However, if the holder requests it and the banker desires he may accept it.

<sup>1</sup> Neg. Inst. Law, § 185, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>2</sup> Exchange Bank v. Sutton Bank, 78 Md. 577, 28 Atl. 563, 23 L. R. A. 176; Minot v. Russ, 156 Mass. 458, 31 N. E. 489, 32 Am. St. Rep. 472, 16 L. R. A. 510. As to remedy of payee of a check against one who has taken it on indorsement of unauthorized agent, see note

13 L. R. A. (N. S.) 211. As to nature of checks, see note 7 L. R. A. 595 and as to what are checks, see note 7 L. R. A. 489.

<sup>3</sup> McDonald v. Stokey, 1 Mont. 388; *In re Brown*, 2 Story (U. S.) 502, 4 Fed. Cas. No. 1,985; Hawley v. Jette, 10 Oreg. 31, 45 Am. Rep. 129.

<sup>4</sup> *In re Brown*, 2 Story (U. S.) 502, 4 Fed. Cas. No. 1,985; Bowen v. Newell, 5 Sandf. (N. Y.) 326.

The whole theory and use of a check points to its immediate payability. A depositor places money with his bank or banker, where it is subject at any time to his order; and by his check or order he desires to appropriate so much of it to another person, and the bank or banker, in consideration of its temporary use of the money, agrees to pay it in whole, or in parcels, to the depositor's order when demanded. But he does not agree to contract to pay at a future day by acceptance and the depositor cannot require it.<sup>4a</sup>

A check is similar to a bill of exchange in that it is a negotiable instrument,<sup>5</sup> if negotiable in form, and is subject to the same rules regarding its transfer. A check may be transferred by indorsement and the indorser incurs the same liability as the indorser of a promissory note or bill of exchange. Like a bill, a check must contain an order; the order must be for the payment unconditionally and at all events; and it must be for a certain sum of money.<sup>6</sup> If an instrument is drawn in all respects as a check except that it orders payment at a day subsequent to its date, it is then a bill of exchange and not a check, being subject to all the rules governing bills of exchange.<sup>7</sup>

Unless a specific date of payment is mentioned, a check is payable upon demand under Section 7 of the Law.<sup>7a</sup>

The drawer of a bill of exchange is discharged by default of the payee or holder in making due presentment to the drawee and in giving notice in case of dishonor, while in case of a check the drawer is not discharged by the failure of the payee or holder to take the above steps unless the delay was unreasonable.<sup>8</sup> A check is due when demand is made for payment and the statute of limitations begins to run after that time. A check may be accepted as payment.<sup>8a</sup>

<sup>4a</sup> *Mt. Sterling National Bank v. Green*, 99 Ky. 262, 35 S. W. 911.

<sup>5</sup> *Gate City Bldg. etc. Assn. v. Nat. Bank of Commerce*, 126 Mo. 82, 28 S. W. 633, 47 Am. St. Rep. 633, 27 L. R. A. 401.

<sup>6</sup> *Grisson v. Commercial Nat. Bank*, 87 Tenn. 350, 10 S. W. 774, 10 Am. St. Rep. 669, 3 L. R. A. 273.

<sup>7</sup> *Whitehouse v. Whitehouse*, 90 Me. 468, 38 Atl. 374, 60 Am. St. Rep. 278; *Harrison v. Nicolle*, Nat. Bank, 41 Minn. 488, 43 N. W. 336, 16 Am. St. Rep. 718, 5 L. R. A. 746.

<sup>7a</sup> *Riddle v. Bank of Montreal*, 145 App. Div. (N. Y.) 207.

<sup>8</sup> *Bull v. Bank*, 123 U. S. 105, 31 L. Ed. 97; *Stewart v. Smith*, 17 Ohio St. 82; *Serle v. Norton*, 2 Moody & R. 401. As to release of indorser of check by delay in presenting it, see notes 22 L. R. A. 785 and 17 Am. St. Rep. 810. As to recovery by holder from drawer or indorser, see 17 Am. St. Rep. 807.

<sup>8a</sup> As to payment by check, see note in 7 L. R. A. 442, and as to effect of acceptance of check as payment, see note 9 L. R. A. 263.

A cashier's check, whether certified or not, is classed with bills of exchange payable on demand.<sup>88</sup>

§ 201. **The formalities of a check.** A check as to its form and formalities differs but little from that of a bill of exchange. All the various requisites of negotiable paper must be complied with in case of a check; there must be certainty as to amount, time and the person to whom payment shall be made and the payment must be in money.<sup>89</sup> In order that the check may be negotiable it must contain words of negotiability, but the absence of such words does not affect the character of the check other than that it is non-negotiable. The signature may be in pencil as well as in ink, it may be stamped or even printed if adopted as one's signature; and it may be by mark. Usually a check does not contain the address of the drawee, while in a bill of exchange it is almost invariably written in the lower left hand corner. The address of the bank is usually written or printed in large letters across the top, just below the date and place of execution. A blank space may be left for the payee's name, which would indicate authority to any *bona fide* holder to insert his name as payee.<sup>90</sup>

A check may bear its actual date, or be ante-dated or post-dated. The Negotiable Instruments Law provides: "*The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.*"<sup>91</sup>

Under the above section an indorsee of a post-dated check is not put upon inquiry merely because of the negotiability of the check prior to the day of its date.<sup>92</sup>

The sum should be distinctly and carefully expressed in figures and in words to avoid any dispute. While either words or figures are sufficient, if they differ, the words control. A change of the figures, so as to conform them to the words made by the holder, without the knowledge or consent of the drawer, is not a material alteration or forgery.<sup>93</sup>

§ 202. **Presentment of a check for payment.** The main purpose of presentment for payment being made in due time is to fix

<sup>88</sup> Singer Mfg. Co. v. Summers, 143 N. C. 103.

<sup>89</sup> Ridgely Nat. Bank v. Patton, 109 Ill. 479; Industrial etc. Bank of Chi. v. Bowers, 165 Ill. 70, 46 N. E. 10, 56 Am. St. Rep. 228; State v. Warner, 60 Kan. 90, 55 Pac. 342.

<sup>90</sup> McIntosh v. Lytle, 23 Minn. 336.

<sup>91</sup> Neg. Inst. Law, § 12.

<sup>92</sup> Albert v. Hoffman, 64 Misc. 87, 117 N. Y. Supp. 1043.

<sup>93</sup> Smith v. Smith, 1 R. I. 398.

the liability of the drawer in case the bank fails before payment is made. The Negotiable Instruments Law provides that:

*"A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay."*<sup>10</sup>

This is simply the enactment of a general principle of law which existed prior to the passage of the act. Simply the want of due presentment of a check will not discharge the drawer, unless he has suffered some loss or injury thereby.<sup>11</sup> The only injury which would be sustained by the drawer in case presentment was not made within a reasonable time would be caused by the failure of the bank subsequent to the delivery and prior to the presentment of the check. Justice Story states the rule in the following language: "If a bank or banker still remains in good credit and is able to pay the check, the drawer will still remain liable to pay the same, notwithstanding many months may have elapsed since the date of the check, and before the presentment for payment and notice of the dishonor. So if the drawer at the date of the check or at the time of the presentment of it for payment had no funds in the bank or banker's hands, or if, after drawing the check and before its presentment for payment and dishonor, he had withdrawn his funds, the drawer would remain liable to pay the check, notwithstanding the lapse of time."<sup>12</sup>

As to what is a reasonable time the Negotiable Instruments Law provides: "*In determining what is a 'reasonable time' or an 'unreasonable time,' regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.*"<sup>12a</sup>

Thus far we have only discussed the effect of delay in presentment as to the drawer. Now we will consider its effect upon an indorser. We have already seen that delay in presentment does not discharge the liability of the drawer unless he has sustained a loss thereby, but we find that a different rule applies as to an indorser. As between the holder and an indorser the rule

<sup>10</sup> Neg. Inst. Law, § 186, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to necessity of demand, see note 7 L. R. A. 490 and as to the time of presenting a check, see note 13 L. R. A. 43. As to when check must be presented for payment, 17 Am. St. Rep. 807.

<sup>11</sup> Anderson v. Gill, 79 Md. 312, 29 Atl. 527, 47 Am. St. Rep. 402,

25 L. R. A. 200; Bull v. Bank, 123 U. S. 105; Little v. Bank, 2 Hill (N. Y.) 425; Henshaw v. Root, 60 Ind. 220; Stewart v. Smith, 17 Ohio St. 82; Alexander v. Burchfield, 7 Mon. & G. 1061. As to presentment and notice, see note 41 U. S. L. Ed. 855.

<sup>12</sup> Story on Promissory Notes, § 498.

<sup>12a</sup> Neg. Inst. Law, § 193,

is that the check must be presented within the time prescribed by the law merchant, which is usually the following day, and if such presentment is not made within a reasonable time the indorser will be discharged from any liability.<sup>13</sup> The question that now arises is what constitutes a reasonable time. The law merchant has established the rule that where the parties all reside in the same place the holder must present it not later than the next day.<sup>14</sup> This is not, however, an absolute and iron-clad rule. What is a reasonable rule will depend upon circumstances and will in many cases depend upon the time, the mode, and the place<sup>15</sup> of receiving the check and upon the relation of the parties between whom the question arises.<sup>15a</sup>

If a bank pays a check after the death of a depositor, but before the bank has received knowledge of that fact, it is a valid payment and the bank is not liable for the amount to the personal representative of the depositor, for on principles of necessity incident to the banking business, if the bank pays in good faith and without notice of the death of the drawer, it is protected.<sup>15b</sup> But if a bank pays a check with knowledge of the drawer's death it is liable for the amount to his estate.

Where the payee of a check collects it after the death of the drawer, he must refund the amount to the drawer's estate.<sup>15c</sup>

**§ 203. Certification of check.** Certification of a check is an agreement whereby the bank agrees to pay the check at any future time when presented for payment. The certification of checks is an expedient and outgrowth of modern commerce quite recent in its origin, but now of daily and extensive occurrence. It enables persons not well acquainted to deal promptly with each other, and it avoids the delay and risks of receiving, counting and passing from hand to hand large sums of money.<sup>15d</sup> No particular form of words is necessary, but the usual method of

<sup>13</sup> *Miller v. Moseley*, 26 La. Ann. 667; *Wymore First Nat. Bank v. Miller*, 43 Neb. 791, 62 N. W. 195; *Smith v. Jones*, 20 Wend. (N. Y.) 192, 32 Am. Dec. 527. As to duty of holder to present, see note 17 Am. St. Rep. 807.

<sup>14</sup> *Morris v. Eufaula Nat. Bank*, 122 Ala. 580, 25 So. 499, 82 Am. St. Rep. 95; *Hamilton v. Winona Salt etc. Co.*, 95 Mich. 436, 54 N. W. 903; *Grange v. Reigh*, 93 Wis. 552, 67 N. W. 1130.

<sup>15</sup> *Grafton First Nat. Bank v.*

*Buckhannon Bank*, 80 Md. 475, 31 Atl. 302, 27 L. R. A. 332; *Parker v. Reddick*, 65 Miss. 242, 3 So. 575, 7 Am. St. Rep. 646; *Wymore First Nat. Bank v. Miller*, 43 Neb. 791, 62 N. W. 195.

<sup>15a</sup> *Merchants' Bank v. State Bank*, 10 Wall. 648 (U. S.).

<sup>15b</sup> *Glennan v. Rochester Trust etc. Co.*, 209 N. Y. 12, 102 N. E. 537, 53 L. R. A. (N. S.) 302.

<sup>15c</sup> *In re Adamson*, 154 N. Y. Supp. 667.

certification is by stamping or writing upon the check the word "certified" and adding the date of the certification. After a check is once certified at the request of the holder, the drawer is released from all liability and all subsequent indorsers are discharged from their obligations.

The Negotiable Instruments Law provides:

*"Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon."*<sup>16</sup>

But the drawer is not discharged when the check is certified at the procurement of said drawer, even if he has the check certified at the request of the one to whom it is payable. So if the drawer has the check certified and then delivers it, the certification does not discharge the drawer.

The bank, after the certification, will not be allowed to dispute the genuineness of the drawer's signature or to question the sufficiency of the funds in its hands to pay, as against a *bona fide* holder.<sup>17</sup> Neither will the bank be allowed to deny the validity of the check on the ground that no payee is named therein, because in such case it will be held payable to bearer. A bank can not refuse to pay a check which it has certified in order that the drawer may enforce a right of set-off against the payee.<sup>17a</sup> The above section of the law applies where a bank, which has taken its customer's check on another bank and given him credit therefor, has the check certified by the drawer.<sup>17b</sup>

The effect of certification is that the bank by certifying the check becomes the principal and only debtor, and the holder by taking a certificate of the check from the bank, instead of requiring payment, discharges the drawer, that is, *"Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance."*<sup>18</sup> The check then circulates as the representative of so much cash in bank, payable on demand to the holder.

<sup>16</sup> Neg. Inst. Law, § 188, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to effect of certification, see note 12 L. R. A. 492, and as to effect on liability of drawer, see note 16 L. R. A. 510.

<sup>17</sup> *Farmers & Mechanics Bank v. Butchers & Drovers Bank*, 16 N. Y. 125; *Espy v. Bank*, 18 Wall. 621, 21 L. Ed. 947; *Louisiana Nat. Bank v. Citizens Bank*, 28 La. Ann. 189. As to liability of bank on certifi-

ation of check, 19 U. S. L. Ed. 1008.

But see *Marine Nat. Bank v. Nat. City Bank*, 59 N. Y. 67.

<sup>17a</sup> *Carnegie Trust Co. v. First National Bank*, 213 N. Y. 301, 107 N. E. 693, L. R. A. 1916C, 186.

<sup>17b</sup> *Lyons v. Union Exchange National Bank*, 150 App. Div. (N. Y.) 493, 135 N. Y. Supp. 121.

<sup>18</sup> Neg. Inst. Law, § 187, and cases cited. As to parol certification see note 7 L. R. A. 428.

And a bank which certifies a raised check and afterwards pays it is entitled to recover the amount from the bank to which it was paid as opportunity of discovering the alteration was equally open to the collecting bank.<sup>18a</sup>

We shall next notice who may certify a check. The board of directors as the governing body of the corporation or bank may delegate to other officers who have not implied power, the power to certify checks. The officers having implied power are the president, cashier and teller.<sup>19</sup> The assistant cashier has not this power and if he certifies a check, signing his name with his official title, "Asst. Cashier," without authority, it is generally held that it is not binding on the bank even in the hands of a *bona fide* holder.

A check cannot be certified before it is payable. Thus if a check is post-dated, the bank would not be bound by a certification made before the date on which the check is payable.<sup>20</sup> Such check carries notice to all that the certification was beyond the officer's authority. If the commercial character of the check has been destroyed in any manner the officer of the bank is not authorized to certify it. If the officer certifies a check of a person who has no funds there, the bank is not bound by it except as to a *bona fide* holder without notice.<sup>21</sup>

Of course a certification must be in writing, thus a bank is not liable on equitable grounds to the holder for the amount of an unaccepted check which it has refused to pay though the holder acquired the check on the oral representation of the bank that the drawer had funds on deposit to meet the check, and that the check was good, and that the holder might safely take it in payment for goods sold the drawer.<sup>21a</sup> And so a telephone message is not a good certification but a telegram sent by a bank that it would pay a certain check has been held to be a certification.<sup>21b</sup>

<sup>18a</sup> National Reserve Bank v. Coon Exchange Bank, 171 App. Div. 195, 157 N. Y. Supp. 316; Jackson Paper Co. v. Commercial Bank, 199 Ill. 151.

<sup>19</sup> Merchants Bank v. State Bank, 10 Wall. 604, 19 L. Ed. 1008; Cooke v. State Nat. Bank, 52 N. Y. 96, 11 Am. Rep. 667.

But see Atlantic Bank v. Merchants Bank, 10 Gray 532.

<sup>20</sup> Clarke Nat. Bank v. Bank of Albion, 52 Barb. 592.

<sup>21</sup> Atlantic Bank v. Merchants Bank, 10 Gray 532; Cooke v. State Nat. Bank, 52 N. Y. 96, 11 Am. Rep. 667.

<sup>21a</sup> Rambo v. First Nat. State Bank of Argentine, 88 Kans. 257, 128 Pac. 182.

<sup>21b</sup> Henrietta Bank v. State Bank, — Tex. —, 16 S. W. 321; Atchison Bank v. Garretson, 51 Fed. 168.

Below is a form of certification:

Detroit, Mich., December 1, 1922. <b>THE EAGLE NATIONAL BANK.</b>	
Pay to the order of Albert Green, Cash	\$200.00 Two Hundred Dollars <b>JOHN MARSH</b>

204. **Forgery and alteration of check.** The rules governing forgeries and alterations to commercial paper in general are applicable to checks.<sup>21a</sup> The bank is under a peculiar obligation, however, to know the signatures of its depositors on the checks drawn against it. But the bank is not presumed to have any peculiar knowledge of the genuineness of the contents of the checks. It is very common now that a check is filled out by a clerk and then signed by the maker. Therefore a bank is not charged with as great a degree of knowledge as to the genuineness of the contents of the checks as of the signature of the drawer. If the bank pays a check which has been altered in any material respect it may recover the money so improperly paid, since the holder of the check guarantees the genuineness of its contents. The general rule therefore is that the bank is strictly held to know the signature of its depositors and money paid on forged checks cannot be recovered.<sup>22</sup> In some jurisdictions there are statutes providing that no bank shall be liable to a depositor for the payment by it of a forged or raised check, unless within one year after the return to the depositor of the voucher of such payment, such depositor shall notify the bank that the check so paid was forged or raised.<sup>23a</sup> A mutilated check puts one on inquiry; thus a bank is guilty of negligence and is responsible to

<sup>21a</sup> As to liability of person whose name is forged, see note 36 L. R. A. 539. As to rights of holder of forged check, see notes 17 Am. St. Rep. 890 and 94 Am. St. Rep. 645.

<sup>22</sup> First Nat. Bank of Danvers v. First Nat. Bank of Salem, 151 Mass. 280, 24 N. E. 44; First Nat. Bank v. Northwestern Nat. Bank, 152 Ill. 296, 38 N. E. 739, 26 L. R. A. 289; Germania Sav. Bank v. Boutell, 60 Minn. 189, 62 N. W.

327, 27 L. R. A. 635. As to drawee's duty to know signature, see note 27 L. R. A. 635. As to bank's liability to depositors for payment of forged check, see notes 2 L. R. A. 96, 7 L. R. A. 596, 849 and 12 L. R. A. 793. As to duty of depositor as to forged check, see notes 27 L. R. A. 426, 36 L. R. A. 539.

<sup>23a</sup> Leather Mfgs. Bank v. Morgan, 117 U. S. 96.



the drawer in paying without inquiry a check which has been torn in pieces and pasted together again.<sup>229</sup> A savings bank is not liable for payments made upon a forged draft unless negligence can be imputed to it; that is, unless the discrepancy between the signature is so marked and plain that an ordinary competent clerk should detect the forgery. Thus the liability differs from that of ordinary banks of deposit, which, as we have seen, are absolutely liable for payments on forged checks no matter how skillful the forgery may be.<sup>230</sup> But the bank is not held to so strict a knowledge of the contents of the check because they are not charged with knowledge of the handwriting in the body of the check, since it may or may not be the handwriting of the drawer. The bank is still liable to a payee or indorsee on whose indorsement alone the check is payable, although the money has been paid on a forged indorsement. But the bank is not supposed to know the signature of indorsers, and if any of them be forged the bank can recover back the money paid out on the check.

Where a drawee bank paid and charged to the account of the drawer checks indorsed by an agent of the payee who had no authority to indorse or collect the checks and who appropriated the money, said drawee bank is liable in conversion, if upon demand for their surrender the bank should refuse to deliver the checks. The bank is not liable to the payee in assumpsit for money had and received under such circumstances. And should the bank deliver the checks, a plaintiff could present them to the bank for payment, and should payment be refused, the plaintiff could notify the drawer and recover from him.

**§ 205. Memorandum check.** A memorandum check has been described to be a contract by which the drawer engages to pay the *bona fide* holder absolutely, and not upon a condition to pay upon presentment at maturity, and if due notice of the presentment and non-payment should be given.<sup>231</sup> The word "memorandum" written or printed upon the check describes the nature of contract with precision. In form and appearance a memorandum check does not differ from an ordinary check except that the words "memorandum," "mem" or "memo" are written upon the face of the check. Such a check is given by the

<sup>229</sup> Scholey v. Ramsbottom, 2 Camp. (Eng.) 485.

<sup>230</sup> Noah v. Bank of Savings, 171 App. Div. (N. Y.) 191; Kelly v. Buffalo Savings Bank, 180 N. Y. 171.

<sup>231</sup> Turnbull v. Osborne, 12 Abbott Prac. (N. S.) 200; Franklin Bank v. Freeman, 33 Mass. (16 Pick.) 535.

drawer to the payee more in the nature of a memorandum of indebtedness than as payment.<sup>24</sup> In the case of a regular check demand for payment and a refusal on the part of the bank are necessary steps before the holder can maintain an action against the drawer, while in the case of a memorandum check the drawer may be sued the same as upon a promissory note.<sup>25</sup> If such a check is presented for payment, and the drawer has sufficient funds to meet it, the bank must honor it like any ordinary check. If the agreement between the drawer and payee is that it shall not be presented for payment, any remedy of the drawer for the breach of such agreement is solely against the payee.<sup>26</sup> If a memorandum check has been indorsed to a *bona fide* holder for value the check then presents all the features of other negotiable instruments.

§ 206. **Stale check.** A stale check is one where there has been unreasonable delay by the holder in presenting for payment. It is always unsafe to delay the presentment for the double reason that the drawer or indorser may be discharged by loss occasioned by the failure of the bank and because a stale check is looked upon with suspicion since custom has established the fact that checks are not supposed to remain long in circulation. Some jurisdictions hold that if the bank pays a stale check which for any reason may be invalid, the bank will be held to have done so at its peril, as the fact that the check was stale was sufficient to put the bank upon inquiry.<sup>27</sup> It has also been held that a purchaser is put upon notice as to the genuineness of a check by the fact that it is stale. There is no absolute rule which may be laid down in determining when a check is stale.<sup>27a</sup>

§ 206a. **Cashier's check.** A cashier's check is one drawn by a bank upon itself. It is a bill of exchange drawn on the bank upon itself, and is accepted by the act of issuance. The right of countermand, as applied to ordinary checks, does not exist as to it.

A cashier's check, whether certified or otherwise, is classed with bills of exchange payable on demand.<sup>28</sup>

<sup>24</sup> United States v. Isham, 17 Wall. 496, 21 L. Ed. 728.

<sup>25</sup> Van Schaack, Bank Checks, 184.

<sup>26</sup> Morse, Banks, 313.

<sup>27</sup> Lancaster Bank v. Woodward, 18 Pa. St. 357.

<sup>27a</sup> Ames v. Merriam, 98 Mass.

294; Estes v. Shoe Co., 59 Minn. 504, 61 N. W. 674; First Nat. Bank v. Needham, 29 Ia. 249; Bull v. Bank, 123 U. S. 105. As to when a check is considered stale, see note 13 L. R. A. 44.

<sup>28</sup> Singer Mfg. Co. v. Summers, 143 N. C. 102, 55 S. E. 522.

§ 206b. **Paid or cancelled check.** A check if payable to order when paid or cancelled is presumed to be a receipt for the debt or obligation.

A bank has the right to keep a cancelled check until the depositor's account is balanced. But after debiting it against the drawer in account with the bank, it is the duty of the bank to return the check to its depositor, who has the better right to its permanent possession as it is to him a voucher of payment of his debt to the payee named in it; and the bank, until it returns the check, has been said to hold it only as agent of the drawer.<sup>28a</sup>

§ 206c. **Crossed check.** A crossed check is one which in addition to the ordinary check contains also the name of a certain banker through whom it must be presented for payment. The name of the banker is usually stamped across the face of the check. This does not destroy the negotiability of the check.

Such checks are used in Canada and in England but not often in the United States.

The statute in England provides that the object of the crossed check is to provide that drawers or holders of drafts, payable to bearer or order on demand, may be enabled effectually to direct the payment of the same only to or through some banker, and that the crossing shall have the force of a direction to the bankers upon whom the check is drawn, that it is to be paid to or through some banker, and that the same shall be payable only to or through some banker.<sup>28b</sup>

§ 206d. **Fraudulent check.** It is usually provided by statute in the different jurisdictions that one issuing a check or other negotiable instrument without having a deposit in bank to meet said instrument and thereby obtaining credit or something of value thereon is guilty of a crime.

Under many of these statutes if the check is issued and payable at a future date, it is not fraudulent.<sup>28c</sup> A bank is not liable to a minor or infant depositor for the payment of checks obtained by fraud by the payee thereof.<sup>28d</sup>

If the drawer delivers his check to an impostor or wrong person and the bank pays the check the drawer must suffer the loss and not the bank.<sup>28e</sup> Thus when a depositor signed a check in blank and it was stolen and a scoundrel filled in the blank with his own name and the amount, the bank has a right to pay the

<sup>28a</sup> Morse on Banking, 291.

<sup>28b</sup> Simmons v. Taylor, 2 C. B. (N. S.) 528, 27 L. J. C. P. 45, 248.

<sup>28c</sup> Brown v. The State, 166 Ind.

<sup>28d</sup> Smalley v. Central — Ind. App. —, 125 N. E. 789.

<sup>28e</sup> Meyer v. Indiana National Bank, 27 Ind. App. 354.

money to such scoundrel and the depositor is the loser. But where the scoundrel filled the name as "A. B." and not his own name and the bank paid it without identification of the scoundrel, the bank is liable.<sup>287</sup>

Where the drawer of a check delivers it to an impostor, believing him to be the payee named in the check, the indorsement thereof by the impostor is not a forgery, and the drawer is liable to any subsequent *bona fide* holder.<sup>288</sup> And where a check is enclosed in a letter which is directed by mistake of the drawer of the check, and the letter is delivered to another person of the same name as the payee, who indorses and negotiates the check, which is finally received by the drawer bank and paid and charged to drawer's account, the latter cannot recover from the bank.<sup>289</sup>

§ 206e. **Stolen checks or stolen negotiable securities.** The thief acquires no title to the negotiable security which he steals and neither does any one who has notice that the instrument was stolen. The owner may trace the instrument or its proceeds so long as it or its substitute can be identified in the hands of the thief or holder with notice.<sup>290</sup>

If however the instrument is indorsed in blank, or payable or indorsed to bearer, a *bona fide* holder for value and without notice may retain the instrument as against the true owner, upon whom the loss falls, and enforce payment by any party liable thereon.<sup>291</sup>

Under Section 57 of the Law a *bona fide* holder of a check payable to bearer can acquire a good title thereto from one who has stolen it.<sup>292</sup> But this section is to be construed in connection with Section 15 of the Law and if the check is incomplete when stolen, it is not valid in the hands of any holder.<sup>293</sup>

When a blank check left by the drawer with his bookkeeper is stolen by an employee, filled out and collected, the payment of the drawer bank is valid as against the drawer, since the drawer is under a duty to see that his checks do not get into the hands of those for whom they are not intended.<sup>294</sup>

Where a check, complete in every respect, except as to de-

<sup>287</sup> *Citizens National Bank v. Reynolds* — Ind. App. —, 126 N. E. 234.

<sup>288</sup> *Burrows v. Western Union Telegraph Co.*, 86 Minn. 499, 90 N. W. 1,111; *Meyer v. Indiana National Bank*, 27 Ind. App. 354, 61 N. E. 596.

<sup>289</sup> *Weisberger v. Bank*, 84 Ohio St. 21.

<sup>290</sup> *Newton v. Porter*, 69 N. Y. 133.

<sup>291</sup> *Jefferson Bank v. Chapman-White-Lyons Co.*, 122 Tenn. 415, 123 S. W. 641.

<sup>292</sup> *Massachusetts National Bank v. Snow*, 187 Mass. 160; *Jefferson Bank v. Chapman*, 122 Tenn. 415.

<sup>293</sup> *Linick v. Nutting*, 140 App. Div. (N. Y.) 265.

<sup>294</sup> *Trust Company of America v. Conklin*, 65 Misc. Rep. (N. Y.) 1,119 N. Y. Supp. 367.

livery, is stolen from the drawer by the payee and negotiated by the latter to a holder in due course, the holder is entitled to recover thereon.<sup>28a</sup>

When an instrument is stolen and negotiated, the burden is upon the holder to show that he himself is a holder in due course, or that he claims under such a holder; and there is no presumption that the thief negotiated the instrument before it became due.

**§ 206f. Check as payment.** In some jurisdictions the giving of a check to a creditor is not in itself a satisfaction of the debt unless the check is paid;<sup>28b</sup> in some other jurisdictions a check when delivered is presumed to be in payment of the obligation or debt, but this presumption may be rebutted by the facts. A question which frequently arises is whether a check given for a less amount than the debt or obligation and marked in full payment or with words to that effect, or accompanied by a letter stating that it is sent in full payment, is, as a matter of fact a full payment, that is, may such check pay a less amount for a larger amount.

The general rule is that if the debt or obligation is unliquidated the acceptance of the smaller amount is good as an accord and satisfaction, thus where there is a controversy, and the debtor claims to owe less than the amount paid, while the creditor claims more, the acceptance of a check in compromise is binding on both parties. Where there is no dispute as to the amount owing by the debtor, and he only seeks to set off an alleged indebtedness in another transaction, the acceptance of a portion of the amount admitted to be due is not a satisfaction of the balance of the account.<sup>28c</sup>

A memorandum on a check that it was for a balance due is not conclusive, but is subject to be explained by parol.<sup>28d</sup>

**§ 206g. Stopping payment.** The order to stop payment must be communicated to the bank before the check to which it refers has been paid; and in the absence of a rule of the bank that stop orders must be in writing, a verbal notice is sufficient.<sup>28e</sup> If a bank pays a check after payment has been

<sup>28a</sup> *Schaefer v. Marsh*, 90 Misc. Rep. 307, 153 N. Y. Supp. 16; *Northampton National Bank v. Kidder*, 106 N. Y. 221; *Hinckley v. Merchants' National Bank*, 131 Mass. 147.

<sup>28b</sup> *Burkhalter v. Second National Bank*, 42 N. Y. 538; *Union Biscuit Company v. Grocery Co.*, 143 Mo.

App. 300; *Cox v. Hayes*, 18 Ind. App. 220.

<sup>28c</sup> *Carton & Jeffrey v. Wm. Thackberry Co.*, 139 Iowa 586, 117 N. W. 953.

<sup>28d</sup> *Bade v. Hibberd*, 50 Ore. 501, 93 Pac. 364.

<sup>28e</sup> *Brandt v. Public Bank*, 139 N. Y. App. Div. 173, 123 N. Y. Supp. 207.

stopped, it cannot charge the amount against the depositor's account.<sup>28a</sup>

The certification of a check by the drawee bank terminates the drawer's right to stop payment.<sup>28t</sup> And so notice to a bank by a depositor that his certified check, indorsed in blank, had been lost and to stop payment, will not justify the bank in refusing payment to a holder in due course.<sup>28u</sup>

The Negotiable Instruments Law provides: "*Notice of dishonor is not required to be given to the drawer \* \* where the drawer has countermanded payment.*"<sup>28v</sup>

And under the above section it has been held that an allegation that payment of a check had been countermanded is sufficiently set out where the check was set forth with the indorsement across the face, "Pyt. Stopped."<sup>28w</sup>

The drawer of a check, who has countermanded payment, is not entitled to notice of its protest.<sup>28x</sup>

Below is given a form of request frequently required by banks for stopping payment on negotiable instruments.

CITY TRUST BANK,  
INDIANAPOLIS:

Please endeavor to stop payment of my check or draft  
Number ----- dated -----  
for ----- DOLLARS

(\$-----) and payable to the order of -----  
My reasons for wishing payment stopped are:-----

I hereby agree to hold you harmless for said amount,  
and all expenses and costs incurred by you on account of your  
refusing payment of said check or draft, and agree further not  
to hold you liable on account of payment contrary to this re-  
quest if same occurs through inadvertence or accident only.

Dated -----  
this ----- day of ----- 19-----

Depositor.

**IMPORTANT.**—Do not issue duplicate check or draft until your pass-book or statement has been received and examined. When issuing duplicates, please notify us.

<sup>28a</sup> People Savings Bank & Trust Co. v. Lacey, 146 Ala. 688, — So. Rep. 346; German National Bank v. Farmers' Deposit National Bank, 118 Pa. St. 294, 12 Atl. Rep. 303.

<sup>28t</sup> National Commercial Bank v. Miller, 77 Ala. 168.

<sup>28u</sup> Poess v. Twelfth Ward Bank,

43 Misc. Rep. 45, 86 N. Y. Supp. 857.

<sup>28v</sup> Neg. Inst. Law, § 114, subd. 5.

<sup>28w</sup> National Copper Bank v. Davis Co. Bank, 47 Utah, 236 152 Pac. 1180.

<sup>28x</sup> First National Bank v. Korn, — Mo. App. —, 179 S. W. 721.

§ 207. **Checkholder's right to sue the bank.** Let us first consider when the holder of a certified check may sue the bank and then consider when the holder of an uncertified check may sue the bank. The great weight of authority is that where the bank has certified a check any holder of the check may sue the bank to compel payment.<sup>29</sup> The certification creates a new and binding obligation on the part of the bank. Delay in presenting a certified check does not discharge the bank from this obligation. It has been said that the obligation of the bank after certifying a check is simply and unconditionally to pay upon demand, and in all such cases the demand may be made whenever it suits the convenience of the party entitled to the stipulated payment. When the business of a bank is properly conducted, it is not possible that it can sustain any loss or prejudice from this interpretation of the contract which it makes in certifying a check; and it is only where delay may be prejudicial that the want of due diligence may be legally imputed and operates as a bar to a claim which the holder could otherwise maintain against the bank.<sup>30</sup> The effect of a certification as to the right of action which may be maintained by the holder simply shifts from the drawer and indorsers to the bank. His right to sue is transferred from a right against the drawer to a right against the bank. A certification does not become effective when made at the instance of the drawer until the delivery of the check to the payee.<sup>30a</sup>

The rule as to the right of a holder of an uncertified check to sue the bank is denied by the great weight of authority. To enable the holder of such a check to successfully maintain an action against the bank it would be necessary for the check to operate as an assignment of the drawer's funds. This, it is plain, an uncertified check does not do, since it is but an order to pay and not an absolute assignment of anything.

The Negotiable Instruments Law provides:

*"A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check."*<sup>31</sup> It would seem on principle that there

<sup>29</sup> Willits v. Bank, 2 Duer (N. Y.) 121; Merchants Nat. Bank v. State Nat. Bank, 10 Wall. 604; Nat. Commercial Bank v. Miller, 77 Ala. 168; Meads v. Merchants Bank, 25 N. Y. 143, 82 Am. Dec. 331. As to liability of bank on certification of check, see note 19 U. S. L. Ed. 1008.

<sup>30</sup> Andrews v. German Nat. Bank, 9 Heisk (Tenn.) 211, 24 Am. Rep. 300; Robson v. Bennett, 2 Taunt. 388, 11 Rev. Rep. 614.

<sup>30a</sup> Anglo South American Bank v. National City Bank, 161 App. Div. (N. Y.) 268, 146 N. Y. Supp. 457.

is no assignment to the holder nor privity of contract between the bank and the holder of an uncertified or unaccepted check, either at law or in equity. The holder's remedy is against the drawer, and to the drawer only is the bank liable if its refusal to pay was a breach of its contract. A check is clearly not an assignment of money in the hands of a banker. The banker is bound by his contract with his customer to honor the check, when he has sufficient assets in his hands. If he does not fulfill his contract, he is liable to an action by the drawer.<sup>32</sup>

The payment of a clearing house balance is not a payment of any particular check, and does not become so until the time within which the check may be returned has expired.<sup>32a</sup>

§ 208. The depositor's right to draw on the bank. The implied contract between the banker and the depositor is that the banker will honor his checks to the amount of his deposits. Therefore it is a plain proposition that only the depositor or his duly authorized agent can draw against the deposits. In case the deposit is made by a partnership the check must be signed by the partnership name and may be issued by any one of the active partners. Where the check is not signed by the partnership name, but instead all the partners sign their individual names the bank may honor the check. Where several persons not a partnership make a joint deposit it is necessary that all their names appear on the check unless they make the deposit a joint and several credit, in which case any one of them may draw on the deposit.

As to corporations it is incumbent upon the bank to ascertain from the charter or by-laws of the corporations what officers are authorized to draw on the deposits of the corporation. But if a check is drawn by an unauthorized officer and the corporation accepts the proceeds of the check, it is estopped to set up the officer's want of authority. Where a number of trustees deposit trust funds the general rule is that all their names must be signed to the check in drawing on the bank, but a court of equity may sanction the drawing of a check by a less number than all.

<sup>32</sup> Neg. Inst. Law, § 189, where all cases directly or indirectly bearing upon or citing the Law are grouped. As to a check as an equitable assignment, see notes in 7 L. R. A. 596, 9 L. R. A. 109; and as to checkholder's right to sue bank for refusal to pay, see note 41 U. S. L. Ed. 207.

<sup>32</sup> *Hopkinson v. Foster*, L. R. 19 Eq. 74. As to liability of bank upon check drawn upon it, see note 19 U. S. L. Ed. 897.

<sup>32a</sup> *Hentz v. National City Bank*, 159 App. Div. (N. Y.) 743, 144 N. Y. Supp. 979.



An agent who has put to his private account funds of an undisclosed principal may recover damages from the bank for refusal to honor his check upon them, although he had improperly obtained them.

**§ 209. Failure of bank to honor check.**—Where the bank possesses funds of a depositor it is bound to honor his checks to the amount of his deposits. If a check is properly drawn and presented for payment and the bank fails to honor it when there are sufficient funds, the depositor may maintain an action against the bank not only for a breach of contract, but also for a tort; in the latter case he would be entitled to recover damages for injury to his credit or any other injury that he might have suffered.<sup>33</sup>

The drawer must have sufficient funds in the bank to meet the check in full to entitle him to maintain an action against the bank for a failure to honor his check, because the bank cannot be required to make a part payment.<sup>34</sup> After the deposit is made the bank is allowed a reasonable time in which to enter the credit upon its books. But if a reasonable time has elapsed between the deposit and the presentment of the check the bank will be liable although the credit was not entered because it is the duty of the bank to properly keep its books and to properly conduct its business.

A bank is not supposed to make a partial payment on a check if it has not sufficient funds to pay the entire amount. In practice the holder of the check sometimes deposits sufficient of his own funds to the drawer's account in order to have sufficient on deposit in the drawer's name so that the latter's check will be honored by the bank.

Overdraft payments are considered as loans made to depositors and if the loan is not made good the bank may then sue for the repayment of the loan upon the implied promise on the part of the person to whom the loan was made to repay the same.

<sup>33</sup> *Mt. Sterling Nat. Bank v. Greene*, 99 Ky. 262, 35 S. W. 911, 32 L. R. A. 568; *Svendsen v. State Bank*, 64 Minn. 40, 65 N. W. 1086, 31 L. R. A. 552. As to liability of bank for refusal to pay, see note

15 L. R. A. 134. As to right to stop payment of check, see note 30 L. R. A. 845.

<sup>34</sup> *Fonner v. Smith*, 3 Neb. 107, 47 N. W. 632, 11 L. R. A. 528.

## SUBDIVISION B—TRAVELERS' CHECKS.

§ 209a. Meaning of term and object.

209b. Provisions.

§ 209c. Rights and liabilities.

209d. Advantages.

209e. Forgery of travelers' checks.

§ 209a. **Meaning of term and object.** A travelers' check is a negotiable instrument upon which the holder's signature must appear twice in order to be a complete instrument. It is issued by a bank to a holder who must place his signature upon the instrument at the time it is issued, and the instrument must be countersigned by the holder before it is paid.

Checks of this character have come into very general use, especially by travelers. They are an ingenious, safe and convenient method by which the traveler may supply himself with funds in almost all parts of the civilized world without the hazard of carrying the money on his person. The bank or company issuing the instrument has the right to refuse to pay it when it does not bear the countersign agreed upon. The owner of the check also has the right to insist it shall not be paid when it is not countersigned as agreed.<sup>1</sup> It is a safe and yet convenient way in which to carry funds in addition to the well-known and reliable letter of credit.

§ 209b. **Provisions.** In order to insure himself against loss, the traveler or holder is required at the time of purchase to sign his name to the checks in a space reserved for "Holder's signature." Travelers' checks can not be cashed unless they are countersigned, and then only if "holder's signature" and "countersignature" correspond, and the countersignature must be affixed to the instrument in the presence of the correspondent of the bank or company issuing the same.

The amount paid in European or foreign countries is specified on each check, so that the holder knows exactly how much foreign money he is to receive, and it is provided that the fixed amounts will be paid without deduction, excepting for the government stamp tax, if any. In countries not specially designated, it is provided that the equivalent of the dollar-amount will be paid at regular market rates.

It is usually provided that if the instrument is lost, the amount will be refunded upon the execution of a satisfactory bond of

<sup>1</sup> Samberg v. American Express 879, L. R. A. 1917F, p. 558 note. Company, 136 Mich. 639, 99 N. W.

indemnity, and that unused checks will be redeemed at their face value.

If the instrument is issued by an agent of the issuer of the instrument, such agent receives from the holder a certain amount of money for the issuer, not as a deposit or for safe-keeping, but upon a contract wherein the issuer undertakes that he will, within one year from the date of the checks when countersigned, pay the amount stated in the check to the order of the payee therein named.<sup>2</sup> It will be seen that identification is easily established by means of two of the travelers' signatures, one being placed on the check at the time of purchase and the other at the time of payment in the presence of the bank officer, that is, the paying agent.

**§ 209c. Rights and liabilities.** The company or issuer of the check has the right to refuse to pay when the check does not bear the countersign agreed upon. The owner of the check also has the right to insist it shall not be paid when it is not countersigned as agreed.

The instrument is not effective as a draft or check, or order for the payment of money, until the purchaser, who, in the presence of the agent of the issuer, has signed his signature, has also countersigned it.<sup>3</sup>

**§ 209d. Advantages.** These travelers' checks are payable all over the world, being cashed by banks, bankers, and tourists' agents; they are also readily taken in settlement of travelers' bills by steamship companies and the principal hotels and stores.

**§ 209e. Forgery of travelers' checks.** One issuing travelers' checks under the agreement to pay them when countersigned by the signature placed on their face is liable to the purchaser for checks paid on a forged signature.<sup>4</sup>

<sup>2</sup> Sullivan v. Knauth, 220 N. Y. 216, 115 N. E. 460 L. R. A. 1917F, p. 554.

<sup>3</sup> Sullivan v. Knauth, 161 App. Div. 148, 146 N. Y. Supp. 583.

<sup>4</sup> Sullivan v. Knauth, 220 N. Y. 216, 115 N. E. 460, L. R. A. 1917F, p. 554; Samberg v. American Express Company, 136 Mich. 639, 99 N. W. 879.

## CHAPTER XIX-a

### LOST AND DESTROYED NEGOTIABLE INSTRUMENTS.

- |   |   |
|---|---|
| § 209f. In general.                     | § 209k. Form of bond of indemnity for paying lost note. |
| 209g. Diligence of owner.               | 209l. Copy admissible in evidence.                      |
| 209h. No title in finder.               | 209m. Burden of proof.                                  |
| 209i. When party liable not discharged. | 209n. Suit at law or in equity.                         |
| 209j. Rule as to indemnity.             | 209o. Demand, protest and notice as to lost instrument. |

§ 209f. In general. There are certain duties and rights of the loser, finder and holder of lost and destroyed negotiable instruments which should be given separate consideration. The duties and rights as to ordinary chattels differ from those as to coins, bank bills and negotiable paper. Negotiable paper takes the place and performs to a large extent the office of money and it would be embarrassing if every taker of such instruments was bound to inquire into the title of the holder and if he were obliged to take it with all the imperfections and subject to all the defenses which attach to it in the hands of the holder. So a *bona fide* holder for value without notice may obtain good title to certain negotiable instruments, such as those negotiable by delivery against the parties thereto, as well as against the true owner; this rule applies to negotiable instruments negotiable by delivery such as those payable to bearer or indorsed in blank.

§ 209g. Diligence of owner. As soon as the owner discovers that he has lost a negotiable instrument he should instantly give notice of the loss to all the parties on such paper and inform them not to pay the amount to any one but to the loser or his order. Thus, if an unaccepted bill of exchange be lost the drawee should be advised not to accept the same.

§ 209h. No title in finder. No title to a lost bill or note vests in the finder and the owner when he has identified it may maintain trover against the finder. If the finder has received payment of the bill or note an action for money had and received for his use may be maintained against him. The owner may likewise maintain an action of replevin against the finder.<sup>1</sup> And it has been held that the finder has no lien on the bill or note for his expenses on account of finding the instrument.

<sup>1</sup> Halbert v. Rosenbalm, 49 Neb.498, 68 N. W. 622.

**§ 209i. When party liable not discharged.** A party liable will not be discharged if he pay the amount to the holder of the lost instrument before maturity as such a payment is not made in the usual course of business.<sup>2</sup> Neither will the party liable be discharged if he had notice of the loss unless the holder is a *bona fide* holder for value and entitled to enforce payment.

**§ 209j. Rule as to indemnity.** Ordinarily where a writing is merely evidence of a contract, the loss or destruction does not destroy the cause of action but in case of negotiable instruments where the parties liable are entitled to have the writings delivered up to them for their security or to enable them to enforce their rights under them when they are called on to perform their obligations, in case such instruments are lost or destroyed, an action can not be maintained unless their rights can be fully secured by a bond of indemnity or other sufficient security. As the parties liable upon a negotiable instrument are entitled to the instrument at time of payment and as this is not possible with a lost instrument, the owner should tender a sufficient indemnity in some form against any future claim by the finder or holder upon a lost instrument. This indemnity should be offered to every party of whom payment is demanded.

There are some exceptions, however, as to the requirement of a bond of indemnity as where a note is payable to order and is unindorsed or where it has been specially indorsed, or where the lost instrument has been traced to the defendant's custody, or where it is shown that the defendant is protected by the Statute of Limitations against future liability.<sup>3</sup>

**§ 209k. Form of bond of indemnity for paying lost note.** The following is a form of indemnity bond for paying a lost note:

#### INDEMNITY BOND FOR PAYING LOST NOTE.

Know All Men By These Presents, That we, AB, principal, of \_\_\_\_\_ and CD, surety, of \_\_\_\_\_, are held and firmly bound unto EF, of \_\_\_\_\_, in the penal sum of \_\_\_\_\_, lawful money of the United States, to be paid to the said EF, his executors, administrators or assigns, for which payment well and truly to be made, we

<sup>2</sup> *Hinckley v. Union Pacific Railroad Co.*, 129 Mass. 52.

<sup>3</sup> *Moore v. Fall*, 42 Maine 450.

bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated the\_\_\_\_\_ day of \_\_\_\_\_19\_\_\_\_\_.

THE CONDITION of this obligation is such that whereas AB, principal, is the owner of a certain promissory note, dated the\_\_\_\_\_day of\_\_\_\_\_, for \$\_\_\_\_\_, and payable\_\_\_\_\_days after date, signed and made by\_\_\_\_\_and payable to the order of \_\_\_\_\_, due\_\_\_\_\_ and which said note has been lost and cannot now be produced by him, and

Whereas, said EF has this day paid to said AB the full amount due thereon upon the agreement that this bond of indemnity would be given and that said AB, principal, and CD, surety, will indemnify and save EF harmless, and will deliver up said note to EF when found.

Now, THE CONDITION of this obligation is such that the above bounden AB, principal, and CD, surety, their heirs, executors, administrators, or any of them shall well and truly indemnify and save harmless the said EF, his executors and administrators from and against any claim on said note and any and all damages, costs, charges, actions or suits by reason thereof, and also deliver or cause said note to be delivered to said EF, if found, then this obligation to be void, otherwise to remain in full force and virtue.

\_\_\_\_\_(SEAL)  
\_\_\_\_\_(SEAL)

State of\_\_\_\_\_ }  
County of\_\_\_\_\_ } ss.  
City of\_\_\_\_\_ }

On this\_\_\_\_\_day of\_\_\_\_\_, 19\_\_\_\_\_, before me, the subscriber, personally appeared\_\_\_\_\_ and\_\_\_\_\_, to be known to be the same persons who executed the foregoing instrument, and they each acknowledged to me that they executed the same.

\_\_\_\_\_  
Notary Public.

My commission expires\_\_\_\_\_.

**§ 2091. Copy admissible in evidence.** An affidavit by the plaintiff addressed to the court is admissible to prove the loss of a bill or note and to lay the foundation for secondary evidence of its contents.<sup>4</sup>

<sup>4</sup>Katzenberg v. Lehman, 80 Ala. 513.

The original existence, genuineness, identity and loss or destruction of the instrument must be proved if disputed in a suit against the maker, otherwise a copy will not be received in evidence.<sup>5</sup>

The contents and terms of a note cannot be shown by parol nor the character in which it had been signed by the makers, whether as principal or sureties, when there has been no showing that the note was lost or destroyed or not within the reach of the court's process.<sup>6</sup>

The loss must usually be proved by circumstantial evidence and the courts are less exacting as to proof where the maker is safe against any future claim of a *bona fide* transferee. Where the circumstances are suspicious or the maker is not protected and safe the courts are more exacting; and where the note is not negotiable the proof need not be so strong as in case of negotiable paper.<sup>7</sup>

And it should be remembered that it must be affirmatively shown that the lost instrument was negotiable since that fact will not be presumed.<sup>8</sup>

Should the negotiable instrument be lost after suit is brought upon the same, the court still has jurisdiction and there may be recovery, as in case of lost notes.<sup>9</sup>

**§ 209m. Burden of proof.** When the loss of a negotiable instrument by the original owner is proven the burden of proof is said to shift and the holder must show that he acquired the instrument as a *bona fide* purchaser or from some one who held title as a *bona fide* holder.<sup>10</sup>

Neglect to offer indemnity to the maker or acceptor on demand before payment does not deprive the payee of his right of action but it will deprive him from recovering costs.<sup>11</sup>

**§ 209n. Suit at law or in equity.** There is a conflict as to whether or not a proceeding upon a lost or destroyed negotiable instrument should be at law or in equity. In those jurisdictions which have separate proceedings at law and in equity the proceeding is usual in equity. And in such jurisdictions there are usually certain exceptions so that the proceeding may be at law in certain cases as where the lost negotiable instrument is proved

<sup>5</sup> Field v. Anderson, 55 Ark. 546, 18 S. W. 1038.

<sup>6</sup> Merrill v. Timbrell, 123 Iowa 879.

<sup>7</sup> Nagel v. Mignot, 8 Mart. 488.

<sup>8</sup> Hough v. Barton, 20 Vt. 455.

<sup>9</sup> Beoteler v. Dexter, 20 D. C. Rep. 26.

<sup>10</sup> Warren v. Smith, 35 Utah 455, 100 Pac. 1069, 136 A. S. R. 1071.

<sup>11</sup> Commercial Bank v. Benedict, 18 B. Mon. 307.

to have been destroyed, or if a negotiable instrument transferable by delivery be traced to the defendant's possession after it is lost or where the debt would be barred by the Statute of Limitations if a third party were to demand payment of the instrument.<sup>12</sup>

§ 209o. Demand, protest and notice as to lost instrument. The Negotiable Instruments Law in Section 160 of the Law provides:

*"When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof."*

The loss of a negotiable instrument is no excuse for want of a demand, protest or notice because it does not change the contract of the parties and the drawer and indorsers on such failure will be discharged.<sup>13</sup>

<sup>12</sup> *Torey v. Foss*, 40 Maine 74.

<sup>13</sup> *Kavanaugh v. Bank*, 59 Mo. App. 540.



## CHAPTER XX.

### SOME OTHER KINDS OF COMMERCIAL PAPER.

§ 210. In general.	§ 215. Draft.
211. Bill of lading.	216. Due bill.
212. Certificate of deposit.	217. Letters of credit.
213. Certificate of stock.	218. Paper money.
214. Coupon bonds.	219. Warehouse receipt.
214a. Liberty Bonds.	219a. Miscellaneous.

§ 210. In general. Among the most common species of commercial paper other than bills of exchange, promissory notes and bank checks are bills of lading, certificates of deposit, certificates of stock, coupon bonds, drafts, due bills, letters of credit, paper money and warehouse receipts.<sup>1</sup>

§ 211. Bill of lading. A bill of lading is an instrument issued by a common carrier to any person desiring to have goods transferred from one place to another. It contains a receipt acknowledging the receipt of the goods and also an agreement to carry them to a certain destination to a party designated in the instrument as the consignee.<sup>1a</sup> In commercial transactions it is regarded as the symbolical representative of the goods which it describes; and its assignment carries with it such rights as the party in possession of the goods could transmit by actual corporal transfer of the goods themselves.<sup>1b</sup> It should contain a description of the quantity and condition of the goods received, the marks on the same, the names of the consignor and consignee, the place of shipment, the place of discharge, and the price of the freight.<sup>2</sup>

The bill of lading is generally issued in sets of three and sometimes in sets of four, yet there need not be more than one copy as the number is immaterial.<sup>3</sup> When issued in sets of three, one is

<sup>1</sup> As to what instruments are negotiable, see notes 7 L. R. A. 537 and 8 L. R. A. 393.

<sup>1a</sup> Knox v. The Nevella, Crabbe 534; 1 Smith Lead. Cas. 879; Haille v. Smith, 1 Bos. & Pul. 564; Howard v. Shepard, 19 L. J. C. B. 248; Sanders v. Vanzeller, 12 L. J. Exch. 497. As to effect of attaching draft to bill of lading upon passing of ti-

tle to the property, see note 22 L. R. A. 423.

<sup>1b</sup> Yergen v. Northern Pacific Railway Co., 19 N. D. 70, 121 N. W. 205.

<sup>2</sup> Gage v. Morse, 12 Allen 410; Germania Fire Ins. Co. v. Memphis etc. R. R., 72 N. Y. 90; Belger v. Dinsmore, 51 N. Y. 166.

<sup>3</sup> Dows v. Perrin, 16 N. Y. 325.

retained by the common carrier, a second by the consignor, and a third is to be sent to the consignee. A bill of lading in the strict commercial sense of the term is not negotiable in like manner as bills of exchange and promissory notes.<sup>4</sup> Yet they are assignable and pass from hand to hand as other non-negotiable instruments. It is more correct to speak of a bill of lading as a *quasi* negotiable instrument since it is rather like, than of them.<sup>4a</sup> It differs from the promissory note, bill of exchange and check, in that it calls for a delivery of goods instead of the payment of money. It is held that goods shipped by a bill of lading drawn to the order of the shipper may be transferred by delivery of the bill.

The character of bills of lading is now regulated in many jurisdictions by statute, and in some, bills of lading are declared to be negotiable like other commercial paper. But the United States Supreme Court has declared that it does not follow under such statutes that all the consequences incident to the assignment of bills and notes ensue or are intended to ensue from such negotiations; and that the rule that a *bona fide* purchaser of a lost or stolen bill or note is not bound to look beyond the instrument has no application to the case of a lost or stolen bill of lading.<sup>4b</sup>

If the owner should lose or have stolen from him a bill of lading assigned in blank, the finder or thief could confer no title upon an innocent third person.<sup>4c</sup>

If the consignee has received the bill of lading of the goods, deliverable to him or his assigns, or assigned to him or his assigns, and assigned it to a *bona fide* third party, then the vendor's right to stop the goods *in transitu* and hold them as security for the purchase money is defeated, and the assignee of the bill acquires as perfect a title to the goods, although they have not reached the buyer's hands, as if they had actually passed through his hands and been delivered bodily to him.<sup>5</sup> But a sale of goods not yet received by the vendee, without a transfer of the bill of lading, would not divest the right of stoppage *in transitu*.

<sup>4</sup> Gurney v. Behrend, 3 E. & B. 622, 22 L. J. Q. B. 265; Blanchard v. Page, 8 Gray 297; Davenport Nat. Bank v. Homeyer, 45 Mo. 145; National Bank v. Merchants Nat. Bank, 91 U. S. 98, 23 L. Ed. 208; Barnard v. Campbell, 55 N. Y. 462.

<sup>4a</sup> National Bank of Bristol v. Baltimore & O. R. Co., 99 Md. 661, 59 Atl. 134, 105 Am. St. Rep. 321.

<sup>4b</sup> Shaw v. Railroad Co., 101 U. S. 557.

<sup>4c</sup> Raleigh & Gaston v. Lowe, 101 Ga. 320, 28 S. E. 867.

<sup>5</sup> Lickbarrow v. Mason, 1 Smith Lead. Cas. 895; Dows v. Greene, 24 N. Y. 641; Becker v. Hallgarten, 86 N. Y. 167; Newhall v. Cent. P. R. R. Co., 51 Cal. 345; Gurney v. Behrend, 2 El. & B. 622; Emery v. Irving Nat. Bank, 25 Ohio St. 360.

And after goods have reached the consignee, the right of stoppage *in transitu*, as its very terms import, is at an end.<sup>6a</sup>

Sometimes for the protection of the vendor the bill of lading for the goods shipped is sent to the vendee, attached to a bill of exchange for the purchase money; the purpose of this is to make the passing of title to the goods contingent upon the honoring of the bill of exchange.<sup>6</sup> A party discounting a bill of exchange on the faith of the indorsement of a bill of lading for goods has such security for the draft as he would acquire if the goods themselves were delivered to him instead of the bill of lading.<sup>6a</sup>

**§ 212. Certificate of deposit.** A certificate of deposit is an instrument in the form of a receipt given by a banker for a certain sum of money. When the time of payment is specified and the words of negotiability are used it is in effect, then, a promissory note. Otherwise it only circulates as a negotiable instrument by assignment.

In general negotiability of such an instrument depends upon its wording and is controlled by the same rules that govern promissory notes.<sup>7</sup>

It has been held that Section 66 of the Negotiable Instruments Law applies to one who indorses in blank a certificate of deposit; and if the paper is dishonored owing to the insolvency of the bank he can be held as indorser.<sup>7a</sup>

So also it has been held that Section 71 of the Negotiable Instruments Law as to presentment applies to a certificate of deposit payable upon demand, and presentment of such a certificate within a reasonable time after its issue must be made in order to charge an indorser thereon.<sup>7b</sup> However, an indorsee may not be held to the same degree of diligence in presenting it for payment as the law requires in other cases.<sup>7c</sup>

A certificate of deposit is payable on demand upon return of the certificate properly indorsed. If the money is to remain in the bank for ninety days or more it usually draws interest,

<sup>6a</sup> Louisville & Nashville R. Co. v. Barkhouse, 100 Ala. 543, 13 So. 534.

<sup>6</sup> Shepard v. Harrison, L. R. 4 Q. B. 197, 5 H. L. 116; Indiana etc. Bank v. Colgate, 4 Daly 41; Marine Bank v. Wright, 48 N. Y. 1.

<sup>6a</sup> Mather v. Gordon Bros., 77 Conn. 341, 59 Atl. 424.

<sup>7</sup> Huse v. Hamblin, 29 Ia. 501; Rindskoff v. Barrett, 11 Ia. 172; Ford v. Mitchell, 15 Wis. 304;

Lindsay v. McClelland, 18 Wis. 481; London (S. C.) v. Hagerstown S. Bank, 12 Casey 498; Easton v. Hyde, 13 Minn. 90.

<sup>7a</sup> Jensen v. Wilslef, 36 Nev. 37, 132 Pac. 16.

<sup>7b</sup> Anderson v. First Nat. Bank of Charlton, 144 Iowa 251, 122 N. W. 918.

<sup>7c</sup> Lindsell v. McClellan, 18 Wis. 481.

but such arrangements must be made at the time of the deposit. Certificates of deposit for a definite period of time are known as time certificates of deposit.

An ordinary deposit slip signed by the cashier of the bank in which the deposit is made is not a certificate of deposit.

The certificate of deposit is used instead of drawing a check on the fund deposited, whenever the depositor desires a continuing security, drawing interest, and payable on demand or at some time in the future.

A certificate of deposit is *prima facie* a conditional payment only if transferred in payment of a debt.

§ 213. **Certificate of stock.** A certificate of stock is a simple certification that a certain person is the owner of so many shares of the stock of the company mentioned. It is signed and sealed by the president and secretary of the company. It is not regarded as coming within the classification of negotiable instruments, but subject to certain rules, it inures to the benefit of the bearer. It is one of that class of instruments, while not negotiable in the sense of the law merchant, it is so framed and so dealt with, as frequently to convey as good a title to the transferee as if it were negotiable. A share in the capital stock of a corporation is not a debt, nor money, nor a security for money, but it is a species of incorporeal personal property. The capital stock of the corporation is so much money, or property assessed at money valuation, which is divided into a number of shares, which shares are the holders' interest in the corporate estate.<sup>74</sup> A certificate of stock is a muniment of title of the same nature as the note or bond of a private person, ordinarily called a "chase in action" or of a State or United States bond, or certificate of debt.<sup>75</sup>

It is not the stock itself but only evidence of the stock, and not money, therefore it is not as fully negotiable as a promissory note or check. The certificate is passed from hand to hand by assignment of the certificate and by the rules of most corporations there must be an assignment on the books of the company in order that the person holding the certificate may be entitled to all the rights of an owner of a certificate of stock in the first instance.

The general rule is that the purchaser of the certificates of stock gets no better title than his vendor had; and if stock which is payable to bearer or assigned in blank is stolen or found, and

<sup>74</sup> Allen v. Pegram, 16 Iowa 173.

<sup>75</sup> Hutchins v. State Bank, 12 Metc. (Mass.) 421.

unlawfully transferred to an innocent purchaser for value, the real owner may nevertheless recover it.<sup>8</sup>

§ 214. **Coupon bonds.** A coupon bond is a primary obligation, in the nature of a promissory note, promising to pay a sum of money on a day certain in the future, to which are attached certain other obligations called coupons, or interest certificates, and of which there are usually as many as there are payments to be made. The term "coupon" is derived from the French "*couper*"—to cut, and is so called because it is *cut off* when it is presented for payment. They may be severed and negotiated before the maturity of the interest they represent, and thus pass as separate and independent securities, like other commercial instruments. In their form coupon bonds usually resemble promissory notes more than they do bank notes, checks or bills of exchange. They are fully negotiable if they contain words of negotiability. Each coupon is in itself a separate instrument containing a distinct and independent promise to pay the sum named. The holder of a coupon bond does not necessarily have to own the bond to recover on the coupon and he can sue on the coupon without producing the bonds to which they were attached.<sup>9</sup>

They are issued by the federal and state governments, by municipal and other public corporations; and by all sorts of private corporations, such as railroads, canal companies and the like. A large portion of the wealth of this country is represented in these bonds. The signature to these instruments is generally written by the president of the corporation, or the chief executive of the municipality issuing them; and there is generally a counter signature by the secretary, or treasurer, or chief clerk of the corporation or municipality. The signature to the coupons, where the bonds are properly signed and sealed, need not be written, but may be printed in *fac-simile*, or otherwise.

Coupon bonds are generally made payable to the party to

<sup>8</sup> *Bereich v. Marye*, 9 Nev. 312; *Burton's Appeal*, 93 Pa. St. 214; *Howard v. Howard*, 7 Wall. 415, 19 L. Ed. 122.

<sup>9</sup> *Clark v. Iowa City*, 20 Wall. 584, 22 L. Ed. 427; *Thompson v. Lee County*, 3 Wall. 327; *City v. Lamson*, 9 Wall. 477, 19 L. Ed. 725; *Clarke v. Janesville*, 10 Wis. 136; *Rose v. City of Bridgeport*, 17 Conn. 243; *R. R. v. Cleway*, 13 Ind. 161; *Commonwealth v. Industrial Assn.*, 98 Mass. 12; *Spooner v. Holmes*, 102 Mass. 503; *Arents v.*

*Commonwealth*, 18 Gratt. 776; *Com'rs of Knox Co. v. Aspinwall*, 21 How. 589; *Town v. Culver*, 19 Wall. 84; *Beaver Co. v. Armstrong*, 44 Pa. St. 63; *Maddox v. Graham*, 2 Metc. (Ky.) 56; *Brainard v. N. Y. & H. R. R. Co.*, 25 N. Y. 496; *Evertsen v. Nat. Bank*, 11 N. Y. S. C. (4 Hun) 694; *Langston v. S. C. R. R. Co.*, 2 S. C. 249; *Nat. Ex. Bank v. Hartford R. R. Co.*, 8 R. I. 375. As to negotiability of coupon bonds, see note 1 L. R. A. 299.

whom they are issued, or bearer, and in such cases are transferable by delivery. Sometimes they are payable to order, and then pass by indorsement; sometimes they are payable to the holder, which term is regarded as equivalent to bearer; sometimes they are payable to a certain party "or his assign," in which case the party's assignment is necessary to pass title, but if he makes an assignment in blank, the title then passes by delivery.

The rights of the purchaser or holder of a coupon bond are determined by the same principles which control those of the purchaser or holder of a bill or note.

The Negotiable Instruments Law in some states has the following provision:

*"The owner or holder of any corporate or municipal bond or obligation (except such as are designated to circulate as money, payable to bearer) heretofore or hereafter issued in and payable in this state, but not registered in pursuance of any state law, may make such bond or obligation, or the interest coupon accompanying the same, non-negotiable, by subscribing his name to a statement indorsed thereon, that such bond, obligation or coupon is his property; and thereon the principal sum therein mentioned is payable only to such owner or holder, or his legal representatives or assigns, unless such bond, obligation or coupon be transferred by indorsement in blank, or payable to bearer, or to order, with the addition of the assignor's place of residence."*

§ 214a. **Liberty bonds.** Liberty bonds are negotiable paper and the purchaser of such bonds, although they have been stolen, acquires a good title thereto, as against the true owner, providing he purchased in good faith, and for a valuable consideration. This rule is limited in its application to bonds which are not mature at the time they are stolen and placed in circulation.

But the purchaser of Liberty Bonds is liable to the real owner if he purchases the same in what amounts to bad faith. Such bonds, being negotiable instruments, payable to bearer, are subject to the provisions of the Negotiable Instruments Law. One of the provisions of that statute, Section 56, declares that one who takes a negotiable instrument with "knowledge of such facts that his action in taking the instrument amounted to bad faith" is not a holder in due course and does not acquire a valid title, and the purchaser in such circumstances is liable to the real owner of the bonds for their value.<sup>10</sup>

<sup>10</sup> Arnd v. Aylesworth, 145 Iowa 185; Ward v. City Trust Co., 117 App. Div. 130 (N. Y.).

Where circumstances showed that a bank had kept "in an insecure place government liberty bonds payable to bearer, which could not be readily identified," the bank was held liable for the theft of the bonds.<sup>11</sup>

It has been held that the class of securities generally designated as municipal bonds are subject to the provisions of the Negotiable Instruments Law.<sup>12</sup>

**§ 215. Draft by bank.** It is customary in the transaction of banking business for one bank to issue drafts upon a bank located in another state. It has been decided that such drafts are checks and the parties thereto are subject to the same liabilities and possess the same rights as though such drafts were drawn upon a particular bank or banker by an individual.<sup>13</sup> By the weight of authority a draft upon a bank not payable immediately is a bill of exchange rather than a check.<sup>14</sup>

**§ 216. Due bill.** A due bill is an instrument whereby one person acknowledges his indebtedness to some other party in form as follows: "Due B two hundred dollars, payable to his order, (signed A)." Thus it is in substance a promissory note. If the bill contains words importing a promise to pay and rendering the instrument negotiable it is generally treated as a promissory note.<sup>15</sup>

A particular kind of due-bill is the clearing-house due-bill or clearing-house certificate. It is a device of clearing-house associations to save inconveniences and labor incident to the settling of balances between the members of the association. A clearing-house is a place or institution where the settlement of mutual claims, especially of banks, is effected by the payment of differences called balances. Clerks from each bank attend the clearing-house with checks and drafts on the other banks belonging to the clearing-house. These exchanges are distributed by messengers among the clerks of the banks that must pay them. The exchanges which a bank takes to the clearing-house are called

<sup>11</sup> Merchants' National Bank of Vandervoort v. Affholter, — Ark. —, 215 S. W. 648.

<sup>12</sup> Neg. Inst. Law, § 332 (New York); Laws of N. Y. 1871, ch. 81; Laws of N. Y. 1873, ch. 595.

<sup>13</sup> Borough of Monvale v. People's Bank, 74 N. J. L. 464, 67 Atl. 67.

<sup>14</sup> Bowen v. Newell, 8 N. Y. 190. Contra: Champion v. Gordon, 70

Pa. St. 474. As to nature of bank draft, see note 23 L. R. A. 173.

<sup>15</sup> Sackett v. Spencer, 29 Barb. 180; Russell v. Whipple, 2 Conn. 536; Carver v. Hayes, 47 Me. 257; Hussey v. Winslow, 59 Me. 170; Franklin v. March, 6 N. H. 364; Cummings v. Freeman, 2 Humph. 144; Huych v. Meador, 24 Ark. 192; Marrigan v. Page, 4 Humph. 247.

creditor exchanges; the exchanges which it receives from the other banks represented there are called debtor exchanges. The balances are paid by the debtor banks to the clearing-house for the creditor banks. The certificates or due-bills are issued, instead of the actual payment of money, by one member of the association to another. They are not merely certificates of deposit creating a contract of bailment but are as negotiable as checks payable to bearer, or as promissory notes payable to order or bearer.

Some jurisdictions have by statutory enactment extended the law of bills of exchange and promissory notes to all instruments in writing whereby any person acknowledges any sum of money to be due to any other person.

**§ 217. Letters of credit.** Letters of credit, sometimes called bills of credit, are open instruments of request from some person, usually a merchant or banker, to any other person to advance money or give credit to some third party and promising that he will repay the same to the party advancing it or will accept bills drawn upon himself for a like amount. If addressed to some particular person, that person alone can advance money upon them and then recover of the writer,<sup>16</sup> but if they are addressed to any person in general then anybody can advance money upon them and recover of the writer. Bills of credit are usually issued by banks or merchants.

These letters are often used by travelers and agents to obviate the risk and burden of carrying about money. In such cases a deposit is made by the bearer of the letter with the banker as an indemnity.

**§ 218. Paper money.** Paper money in its most common form is that of United States treasury notes, United States silver and gold certificates and bank notes. United States treasury notes differ very little from promissory notes payable on demand except as to the texture of the paper on which they are printed. The purpose of the quality of the paper used is to prevent counterfeiting. Treasury notes differ from other paper money in that they have been made a legal tender by the federal government. Gold and silver certificates circulate as money. They specify on their face that there has been placed or deposited in the treasury of the United States a sum of gold or silver as indicated by the certificate which is payable to the bearer on demand. These certificates are not a legal tender. Bank notes or bank bills are

<sup>16</sup> *Robins v. Bingham*, 4 Johns. to what a letter of credit is, see note 476; *Walsh v. Baillie*, 10 Johns. 180; 7 L. R. A. 209. *Taylor v. Wilmore*, 10 Ohio 490. As



the promissory notes of an incorporated bank and are intended to circulate as money. They are not legal tender, but may be tendered in payment of debts the same as other money, if not objected to. They are payable to bearer on demand and are negotiable. It has been held that a *bona fide* holder can compel payment to him although they are proven to have been stolen from the rightful owner. The mere possession of the note is *prima facie* evidence of *bona fide* ownership and this presumption is so strong that it can not be overturned by showing the holder was negligent in taking the notes without inquiry. All that it is necessary to show in this connection is that they were obtained in the usual course of business.

The payment of bank notes is secured by the deposit of government bonds, and the banks issuing said notes being so closely supervised by the government, the said notes circulate without regard to the banks which gave them life. The financial standing of the national bank note differs in nothing from the treasury note, except that the treasury note is a legal tender and the bank note is not.

**§ 219. Warehouse receipt.** A warehouse receipt is a receipt showing the acceptance of grain or other goods which are to be delivered to the bearer. As to grain, upon its receipt by the warehouseman or elevator company an instrument is issued which sets out that a certain quantity of grain and kind has been received and a promise is made to deliver it to the order of the depositor. Such warehouse receipts are taken by the depositor or the exchanges of the cities as the representative of the grain itself and when the latter is sold the receipts are transferred by assignment and delivery, or by delivery alone. In such manner the title to the grain will be transferred just as if the grain itself had been delivered.

These receipts represent goods and not money and so are not negotiable as promissory notes and bills of exchange.<sup>17</sup>

**§ 219a. Miscellaneous.** Post office money orders are not negotiable instruments. The restrictions and limitations which the postal laws and regulations place on money orders are inconsistent with the character of negotiable instruments.<sup>18</sup>

<sup>17</sup> Second Nat. Bank v. Wall-ridge, 19 Ohio St. 419; Burton v. Curryea, 40 Ill. 320; Canadian Bank v. McCrea, 40 Ill. 281; Spangler v. Butterfiest, 6 Colo. 356; Solomon v. Bushnell, 11 Oreg. 272, 50 Am. Rep. 475; Durr v. Hervey, 44 Ark. 301, 51 Am. Rep. 594; Louisville

Bank v. Boyce, 78 Ky. 42; Griswold v. Haven, 25 N. Y. 595.

See also, Allen v. Maury, 66 Ala. 10; Fourth Nat. Bank v. St. Louis Compress Co., 11 Mo. App. 333.

<sup>18</sup> Bolognesi v. United States, 189 Fed. 335, 111 C. C. A. 67, 36 L. R. A. (N. S.) 143 and notes.

## CHAPTER XXI.

### SURETYSHIP AND GUARANTY.

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| <p>§ 220. Terms defined and distinguished.</p> <p>220a. Who are principals and who sureties.</p> <p>221. Consideration as to a guaranty.</p> <p>222. Guaranty as affected by statute of frauds.</p> <p>222a. Conditional guaranties.</p> <p>223. Negotiability of guaranties.</p> <p>224. Notice to guarantor of default of principal when demand is made.</p> | <p>§ 225. Liability of concealed sureties on accommodation paper.</p> <p>226. Remedies of guarantors.</p> <p>226a. Limit of surety's recovery.</p> <p>226b. Trial of suretyship.</p> <p>227. Discharge of guarantors and sureties.</p> <p>227a. Contribution between sureties.</p> |
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§ 220. Terms defined and distinguished. Guaranty is an undertaking by one person that another shall perform his contract or fulfill his obligation, and in case he does not do so the guarantor promises to answer in damages. A guarantor of a bill or note is one who engages that the note shall be paid. A contract of suretyship is a contract by which the surety becomes bound as the principal or original debtor is bound. It is a primary obligation, and the creditor is not required to proceed first against the principal before he can recover from the surety.

The surety is bound with his principal as an original promisor, that is, he is a debtor from the beginning and must see that the debt is paid and is held ordinarily to know every default of his principal, and cannot protect himself by the mere indulgence of the creditor, nor by want of notice of the default of the principal, however such indulgence or want of notice may, in fact, injure him.<sup>1</sup> Being bound with the principal his obligation to pay is equally absolute. One who signs a promissory note on the face thereof, and who in that way becomes a surety for the principal maker is, under the Negotiable Instruments Law, primarily liable for the payment of such note.<sup>1a</sup> On the other hand, the contract of a guarantor is his own separate contract; it is in the nature of a warranty by him that the thing guaranteed to be

<sup>1</sup> *Millan v. Bull's Head Bank*, 32 Ind. 11. See note 13 L. R. A. (N. S.) 204. As to signing by surety for surety, see note 21 L. R. A. 247.

<sup>1a</sup> *Rouse v. Wooten*, 140 N. C. 557, 53 S. E. 430, 111 Am. St. Rep. 875.

done by the principal shall be done, and is not merely an engagement jointly with the principal to do the thing.<sup>2</sup> A guarantor, not being a joint contractor with his principal, is not bound to do what the principal has contracted to do, like a surety, but only to answer for the consequences of the default of the principal.

The guarantor has to answer for the consequences of his principal's default. A surety is an insurer of the debt. A guarantor is an insurer of the solvency of the debtor. A surety may be sued as promisor, but a guarantor cannot. The surety and the principal being equally bound may be joined as defendants in one suit or the surety may be sued alone, without any effort having been made to recover the debt from the principal; but a guarantor, being bound by a separate contract, must be sued separately.

The Negotiable Instruments Law provides:

*"A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity."*<sup>2a</sup>

The intention must be by appropriate language used for that purpose; and such intention may not be inferred from conduct, or from language that is not clear. But where one wrote upon the back of a note the words: "I hereby guarantee payment of the within note," the word "guarantee" indicated his intention not to be bound as indorser.<sup>2b</sup>

By way of summary some of the differences between a surety and guarantor may be stated as follows:

#### Some Differences Between Surety and Guarantor.

1. A surety is a co-maker with the principal; a guarantor is not.
2. A surety agrees to do the thing itself; a guarantor agrees that the principal will do it, and if he does not, he will pay the damages.
3. The entire contract of the surety does not have to be in writing; the entire contract of the guarantor, except in some jurisdictions as to the statement of the consideration, must be in writing.
4. The surety is primarily liable; the guarantor is secondarily liable as he agrees to act if the principal does not.

<sup>2</sup> La Rose et al. v. Logansport Bank, 102 Ind. 332; Reigert v. White, 52 Pa. St. 438; Harris v. Newell, 42 Wis. 687.

<sup>2a</sup> Neg. Inst. Law, § 63.

<sup>2b</sup> Noble v. Beeman-Spaulding Co., 65 Ore. 93, 131 Pac. 1006, 46 L. R. A. (N. S.) 162.

5. The surety and principal may be sued jointly, but the guarantor and principal must be sued separately.

6. An extension of time ordinarily releases the surety, whether he is damaged or not, but a guarantor is released only in case he is damaged by the extension.

7. A surety is not released by failure to receive notice, as there is no legal duty resting upon a holder of paper to notify the surety of default; the guarantor is discharged if he has been damaged by failure to receive notice of the default of the principal.

8. The surety's contract is negotiable; the guarantor's contract is not negotiable in most jurisdictions but is assignable.

9. In some jurisdictions by statute a creditor upon receiving notice from the surety to sue upon an instrument must do so to preserve his rights; the guarantor does not have this right against a creditor.

**§ 220a. Who are principals and who sureties.** The acceptor of a bill of exchange and the maker of a note are principals as to the other parties thereto. And to the holder of such bill or note the drawer of such bill and the indorsers of such bill or note are sureties of the acceptor or maker.<sup>20</sup>

The fact that the liability of the drawer or indorser is fixed by due demand and notice, does not change their relation as sureties of the debt; it only fixes their liability as sureties for its payment, provided nothing is done by the creditor to relieve them from liability.<sup>21</sup>

If a final judgment has been entered against the drawer or indorser, the relation of suretyship ceases, and his liability is merged in that of a principal judgment debtor unless the statutes should otherwise provide.<sup>22</sup>

**§ 221. Consideration as to guaranties.** The general doctrine upon this subject is that a consideration is necessary to support a guaranty.<sup>23</sup> In some instances the consideration of the note or bill is of itself sufficient, while in other cases an independent consideration is required. A guaranty of the payment of a negotiable promissory note, written by a third person upon the note before its delivery, requires no other consideration to support it, and need express none other than the consideration which the note

<sup>20</sup>Gunnis v. Weigley, 114 Pa. St. 194.

<sup>21</sup>Priest v. Watson, 7 Mo. App. 578.

<sup>22</sup>Bray v. Manson, 8 M. & W. 668.

<sup>23</sup>Davis v. Wells, 104 U. S. 159, 26 L. Ed. 686; Rause v. Glissman, 29 Ill. App. 321.

upon its face implies to have passed between the original parties.<sup>4</sup> In such a case the credit is given to both, and not to one alone, although only one may derive any substantial benefit from the transaction. But a guaranty written upon a promissory note, after the note has been delivered and taken effect as a contract, requires a distinct consideration to support it, and if such a guaranty does not express any consideration, it is void, where the Statute of Frauds of the state requires the consideration to be expressed in writing as a contract of guaranty not entered into at the same time as the original obligation or its acceptance by the guarantee must be supported by a consideration distinct from that of the original obligation.<sup>4a</sup> There seems to be an exception to this requirement, as in the case where the guaranty was agreed upon at the time of making the principal contract, and it was merely committed to writing afterwards. If the consideration is a continuous thing, running along at the time both of the principal contract and of the guaranty, it is considered a contemporaneous guaranty and does not require a distinct consideration.

§ 222. **Guaranty as affected by statute of frauds.** Guaranty is an undertaking to answer for the debt or default of another within the meaning of the Statute of Frauds, and must accordingly be in writing and signed by the party to be bound or by his lawful agent. That statute provides that no action shall be brought to charge any person, upon any special promise to answer for the debt, default or miscarriage of another, unless the promise, contract or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized; and the consideration of any such promise, contract or agreement need not be set forth in such writing, but may be proved.

Since a guaranty is a promise or an undertaking by one person to answer for the debt, default or miscarriage of another person the question arises as to whether or not a writing setting out the consideration and signed by the person to be charged thereby is necessary. The courts in this country are agreed that the signature of the party to be charged must be obtained, but the decisions are at a variance as to whether the consideration for the guaranty should also be set out in full.<sup>5</sup> If the statute only

<sup>4</sup> *Moses v. Lawrence Co. Bank*, 149 U. S. 298, 37 L. Ed. 743.

<sup>4a</sup> *Clements v. Jackson County Oil and Gas Company*, — Okla. —, 161 Pac. 216, L. R. A. 1917C, p. 437.

See also note 44 L. R. A. (N. S.) 481.

<sup>5</sup> *Nichols v. Allen*, 23 Minn. 543; *Rigbey v. Norwood*, 34 Ala. 129; *Reed v. Evans*, 17 Ohio 128; *Gil-*

requires the promise to be in writing it seems that the consideration need not be in writing.<sup>6</sup> This is established upon the principle that the promise is not the entire agreement and therefore does not include the consideration. In order that the agreement may be controlled by the statute it must contain a promise to answer for the debt of another both in form and in fact.<sup>7</sup> It has been held that if the transaction be nothing more than an indirect way of guaranteeing the payment of one's transfers to his creditor, such as giving the note of another which is payable to himself with a guaranty that this third person's note will be paid, the guaranty is substantially that the guarantor's original debt will be paid by the collection of this third person's note; and for this reason the guaranty need not be in writing.

**§ 222a. Conditional guaranties.** A conditional guaranty is one which depends upon some condition, for example a guaranty of the collectibility of an instrument, in which case there is no right of recourse against the guarantor until the holder has first made proper effort to collect from the principal debtor.

The Negotiable Instruments Law provides as follows:

*"Subject to the provision of this act, when the instrument is dishonored for non-payment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder."*<sup>7a</sup>

This section does not change the law as to conditional guaranties for the express terms of such contract exclude the idea of an intention to incur the liability prescribed by said section.<sup>7b</sup>

**§ 223. Negotiability of guaranties.** Whether a guaranty on a negotiable bill or note is itself negotiable is a question concerning which there is much confusion. It is held by some cases that the guaranty does not fall within the rule of negotiability, and can inure only to the benefit of the person to whom it was given. On the other hand, it is held in some jurisdictions that the guaranty passes with the instrument, and inures to the benefit of the holder. Some of those cases, holding that it passes with the instrument as being negotiable, treat it in the nature of an indorsement, while still others hold that it is not negotiable on the ground that it is a contract of the common law and not of the law merchant, and consequently is incapable of negotiability by any intention of the guaranty. Authorities, however, are not wanting

*lghan v. Boardman*, 29 Me. 79.

<sup>6</sup> *Violett v. Patten*, 5 Cranch 142, 3 L. Ed. 61.

<sup>7</sup> *Birkmyr v. Darnell*, 3 Ld. Raymond 1085, 6 Mod. 248, 1 Salk. 27.

<sup>7a</sup> The question as to when a guaranty is a continuing one is discussed in the note 39 L. R. A. (N. S.) 724.

<sup>7b</sup> Neg. Inst. Law, § 84.

evidence as against all parties except a *bona fide* holder without which decline to take this view where the guaranty is by a third person, and not by the holder of the instrument, and, while not readily allowing negotiability to a guaranty, allowing it to the guaranty if the language of the guaranty does not restrain it. The better doctrine seems to be to hold the guaranty as non-negotiable, since it is a common law contract and is not properly considered an indorsement. It may be transferred with the indorsement by assignment and the assignee can then maintain an action upon the guaranty in his own name under statutes of most of the states.<sup>7a</sup>

§ 224. Notice to guarantor of default of principal when demand is made. The guarantor's contract is more rigid than that of an indorser and he is bound to pay the amount upon a presentment made and notice given to him of dishonor, within a reasonable time.<sup>8</sup> And in the event of a failure to make presentment and give notice within such reasonable time, he is not absolutely discharged from all liability, but only to the extent that he may have sustained loss or injury by the delay. The same person may be a guarantor and also an indorser of a note; and in such case the failure to give him due notice of demand and non-payment will discharge him as indorser, but he will still be bound as a guarantor, as the rule as to notice does not apply to guarantors.<sup>8a</sup> In case the principal is insolvent at and before maturity of the bill or note, the guarantor is liable, because it is presumed that the guarantor has suffered nothing in that case from the failure to give notice of the default.<sup>9</sup>

§ 225. Liability of concealed sureties on accommodation paper. If a person signs an instrument as an accommodation for another party and writes the word *surety* after his signature, he must be treated as such by all subsequent holders whether he be the drawer or acceptor of a bill of exchange, the maker of a promissory note or the indorser of either.<sup>10</sup> But in case the instrument does not disclose his real character as a surety the question then arises, can such relation be shown and the liability fixed in accordance therewith. The English equitable rule is that the character of a concealed surety who appears on the instrument as a regular acceptor or indorser may be shown by parol

<sup>7a</sup> Cowles v. Peck, 55 Conn. 251; Summers v. Barrett, 65 Iowa 292.

<sup>8</sup> Clay v. Edgerton, 19 Ohio St. 553; Montgomery v. Kellog, 43 Miss. 486.

<sup>8a</sup> Brown v. Curtiss, 2 N. Y. 225.

<sup>9</sup> Wolfe v. Brown, 5 Ohio St. 304.

<sup>10</sup> Hunt v. Adams, 5 Mass. 358; Robison v. Lyle, 10 Barb. 512; Sayles v. Sims, 73 N. Y. 552.

notice.<sup>11</sup> However, the great weight of judicial opinion denies the admissibility of parol evidence to prove the party's real character where it would materially change the party's liability to the paper and follows the English common law rule, which permits all subsequent holders to a bill or note to treat all the prior parties according to their ostensible character.<sup>12</sup> But if the concealed surety is a co-maker or drawer and proof of his character would not reverse the evident intention of the parties as to his relation to the paper, the general trend of judicial opinion in this country is to admit such proof.<sup>13</sup>

**§ 226. Remedies of guarantors.** The remedies which are available to guarantors are of two classes. The first and most common is that by which the guarantor pays the debt and recovers of the principal and all other parties whom the holder may have held liable.<sup>14</sup> But he can only recover a sum equal to the amount he was compelled to pay with interest on the same.<sup>15</sup> The second method which he may pursue is to file a bill in equity making as parties thereto the creditor and the principal parties, to enjoin proceedings against himself until the resources of the principal have first been exhausted.<sup>16</sup> The creditor may demand the guarantor to indemnify him against loss.<sup>17</sup> This is a very unusual proceeding and the interests of the guarantor can always be fully protected by the former proceeding.

**§ 226a. Limit of surety's recovery.** The limit of the surety's recovery who pays a bill or note, or other obligation of his principal is the amount with legal interest necessary to indemnify him.<sup>17a</sup> So if he compromises the debt he can only recover back the amount accepted by the creditor in compromise of it.

A surety who makes payment is subrogated to all the rights of the holder and to the enjoyment of all the securities which his principal was entitled to for the payment of the debt.<sup>17b</sup>

**§ 226b. Trial of suretyship.** The statutes in some states provide that when any action is brought against two or more de-

<sup>11</sup> *Erwin v. Lancaster*, 6 Best & S. Q. B. 572; *Hollier v. Eyre*, 9 Cl. & F., 1, 45; *Strong v. Foster*, 17 C. B. 201.

<sup>12</sup> *Farmers etc. Bank v. Rathbone*, 26 Vt. 19; *Stephens v. Monongahela*, 88 Pa. St. 157.

<sup>13</sup> *Hubbard v. Gurney*, 64 N. Y. 460; *Sayles v. Sims*, 43 N. Y. 552; *Stillwell v. Aaron*, 69 Mo. 539.

<sup>14</sup> *Humphrey v. Hitt*, 6 Gratt.

524; *Edgerly v. Emerson*, 23 N. H. 555.

<sup>15</sup> *Petre v. Duncombe*, 20 L. J. Q. B. 242.

<sup>16</sup> *Humphrey v. Hitt*, 6 Gratt. 524.

<sup>17</sup> *Humphrey v. Hitt*, 6 Gratt. 524.

<sup>17a</sup> *Smith v. Mason*, 44 Neb. 611, 63 N. W. 41.

<sup>17b</sup> *Sheahan v. Davis*, 27 Oreg. 279, 40 Pac. 405, 50 Am. St. Rep. 722.



defendants upon a contract, any one or more of the defendants being surety for the others, the surety may, upon written complaint to the court, cause the question of suretyship to be tried and determined upon the issue made by the parties at the trial of the cause, or at any time before or after the trial, or at a subsequent term; but such proceedings shall not affect the proceedings of the plaintiff. And if the finding upon such issue be in favor of a surety, the court shall make an order directing execution to be levied, first upon the property of the principal exhausting his property, before levy shall be made upon the property of the surety.

§ 227. **Discharge of guarantors and sureties.** Guarantors and sureties may be discharged in any one of the following three ways: (1) By a discharge of the principal, as anything which discharges the principal will discharge the guarantor or surety;<sup>18</sup> (2) by the signature having been obtained by fraud;<sup>19</sup> and (3) lastly by the surrender to the principal or other party to the paper of the collateral securities.<sup>20</sup> Any alteration of the written instrument which will discharge the principal will also discharge the surety. The surety may be released by an alteration which does not release the principal debtor. In the case where a creditor receives from the principal debtor payment of interest in advance on a past due note an agreement to give time is necessarily implied and the creditor thereby debars himself in the meantime of suing on the note, and the surety is therefore discharged, unless the creditor can show mistake, or possibly an agreement that the right of suit should not be suspended.<sup>21</sup> Another classification of matters which will discharge a surety is as follows:<sup>21a</sup> (1) Misrepresentation or concealment to induce his becoming surety. The contract is voidable from the beginning as between the surety and all parties privy to such misrepresentation or concealment;<sup>21b</sup> if a principal signed under duress, the holder guilty of the duress could not enforce the obligation against a surety.<sup>21c</sup> (2) Diversion of the instrument from the agreed purpose. As where accommodation paper is signed that it shall be used for a particular purpose and diversion in its use operates a discharge

<sup>18</sup> *Broadway Sav. Bank v. Schmucker*, 7 Mo. App. 171; *Glouster Bank v. Worcester*, 10 Pick. 528.

<sup>19</sup> *Melick v. First Nat. Bank*, 52 Ia. 94.

<sup>20</sup> *Dillon v. Russell*, 5 Neb. 484; *Kirkpatrick v. Hawke*, 80 Ill. 122.

<sup>21</sup> *McLemore v. Powell*, 12

*Wheat*. 554; *Galbraith v. Fullerton*, 53 Ill. 126; *Muirhead v. Kirkpatrick*, 9 Harris 237.

<sup>21a</sup> *Daniel on Negotiable Instruments*.

<sup>21b</sup> *Lewis v. Brown*, 89 Ga. 115, 14 S. E. 881.

<sup>21c</sup> *Griffith v. Sitgraves*, 90 Pa. St. 161.

of the accommodation party as to all other parties who have knowledge of such diversion.<sup>21a</sup> (3) Alteration. Any material variation in the instrument without the consent of the surety will discharge him.<sup>21b</sup> (4) Payment. Thus payment by the parties primarily liable discharges parties secondarily liable as payment by the maker or acceptor discharges the drawer and indorsers; and a tender of payment which the holder refuses to accept will discharge a surety.<sup>21c</sup> (5) Release. A release of the acceptor or maker discharges the drawer and indorsers.<sup>21d</sup> (6) Satisfaction. The holder's claim may be extinguished as to an indorser or drawer, and the debt not be satisfied, but if there is a satisfaction by one, it operates as to all.<sup>21e</sup> (7) Covenant not to sue a prior party. This discharges the surety because it disables him from suing should he pay the debt. (8) Parting with security for the debt. Thus if any collateral security which the creditor held be released, or a judgment lien given up or a levy withdrawn, the surety is discharged.<sup>21f</sup> (9) Agreement to indulge prior party by extension of time or forbearance of suit. The weight of authority seems to be against this last proposition.<sup>21g</sup> It is held by the weight of authority that the plea of fraud or misrepresentation will not avail to discharge a guarantor or surety as against a *bona fide* holder. The surety or guarantor is discharged if the holder surrenders the collateral securities to the principal or any other party to the paper;<sup>22</sup> if the holder enters into a binding contract for the extension of time they are discharged.<sup>23</sup> Under the principle of subrogation, the guarantor or surety has a vested interest in the collateral security, which can not be jeopardized or destroyed without his discharge from his liability. The agreement for an extension of the time of payment in order to be a discharge must not only be based upon a valuable executed consideration of some sort, but the agreement must be absolute and for an extension of payment for a definite period of time.<sup>24</sup>

<sup>21a</sup> Haworth v. Crosby, 120 Iowa 612, 94 N. W. 1098.

<sup>21b</sup> Stutts v. Strayer, 60 Ohio. St. 384, 54 N. E. 368, 71 Am. St. Rep. 723.

<sup>21c</sup> Hudson Bros. Commission Co. v. Glencoe Sand and Gravel Co., 140 Mo. 103, 41 S. W. 450, 62 Am. St. Rep. 722.

<sup>21d</sup> Montgomery v. Sayre, 100 Cal. 182, 34 Pac. 646, 38 Am. St. Rep. 271.

<sup>21e</sup> Story on Note, § 403.

<sup>21f</sup> State Bank of Lock Haven v. Smith, 155 N. Y. 185, 49 N. E. 680.

<sup>21g</sup> Wolstenholme v. Smith, 34 Utah 300, 97 Pac. 329.

<sup>22</sup> Muirhead v. Kirkpatrick, *supra*.

<sup>23</sup> Fellows v. Prentiss, 3 Denio 512. See also Fanning v. Murphy, 126 Wis. 538, 105 N. W. 1056, 4 L. R. A. (N. S.) 666.

<sup>24</sup> Norris v. Cumming, 2 Rand. 323; Smith v. Sheldon, 35 Mich. 42.

It has been held, however, that payment of interest in advance on a past due note operates to extend the time of payment and releases the sureties.<sup>24a</sup>

**§ 227a. Contribution between sureties.** The right to contribution arises out of an implied promise amongst co-sureties to share equally the burdens of co-suretyship,<sup>25</sup> and, therefore, does not exist where there is an express understanding to the contrary.<sup>26</sup>

If one co-surety be required to pay the whole debt, the others are bound to contribute in equal proportions, and the co-surety may recover of the others their aliquot shares.<sup>27</sup> The liability of co-sureties to each other for contribution is not joint but several.<sup>28</sup>

The right of contribution arises between co-sureties though the same debt be secured by different instruments, executed by different sureties; and though one portion of the debt be secured by one instrument, and one portion by another; and even though the surety demanding contribution did not at the time of the contract know that he had any co-sureties.<sup>29</sup>

Where the debt is paid by several sureties in equal proportions, the equities between them as co-sureties cease, and each becomes an independent creditor of the principal for the amount he may have paid; so that if one of them subsequently received indemnity from the principal for his own debt, the others are not entitled to participate therein, such indemnity not proceeding from securities held by the surety or creditor previous to the payment of the debt, although the general rule is that a co-surety is entitled to participate in any indemnity which any of his co-sureties may obtain from the principal, directly or indirectly.<sup>30</sup>

The co-surety, in order to maintain his suit for contribution, must have made payment under a legal and fixed obligation, but not necessarily under compulsion of suit or legal process.<sup>31</sup>

One of two co-sureties on a note paid the note at maturity to a holder in due course and sued his co-surety for contribution

<sup>24a</sup> Matchett v. Winona, 113 N. E. 1.

<sup>25</sup> Hedges v. Mehring, — Ind. App. —, 115 N. E. 433.

<sup>26</sup> Chappell v. McKeough, 21 Colo. 277, 40 Pac. 769.

<sup>27</sup> Caldwell v. Hurley, 41 Wash. 296, 83 Pac. 318.

<sup>28</sup> Voss v. Lewis, 126 Ind. 155, 25 N. E. 892.

<sup>29</sup> Craythorn v. Swinburne, 14 Ves. 169; McBride v. Potter Lovell Co., 169 Mass. 7, 47 N. E. 242, 61 Am. St. Rep. 265.

<sup>30</sup> Tolle v. Boeckeler, 12 Mo. App. 55.

<sup>31</sup> Nixon v. Beard, 111 Ind. 140; March v. Barnett, 114 Cal. 375, 46 Pac. 152.

who pleaded failure of consideration between the principal maker and the payee, but this was held to be no defense to his claim for contribution.<sup>33</sup>

To give credit to a note, A and B agreed to become accommodation co-makers on a note payable to C; A signed as a co-maker and there being no more room on the face of the note, B wrote his name on the back and no notice of dishonor of the note was given to B. C sued and recovered of A, and A sued B for contribution and recovered, oral evidence being admitted to show that they were co-sureties.<sup>33</sup>

A surety indorser who pays the note can not recover contribution from other indorsing sureties without showing presentment and notice of dishonor.<sup>34</sup>

While the drawer and indorsers of a bill are sureties of the acceptor as to the holder of said bill, they are not as between themselves co-sureties, liable for contribution to each other in the event that any one should pay the amount for the acceptor; for each prior party is a principal as between himself and each subsequent party.

<sup>33</sup> Cummins v. Line, 43 Okla. 575, 143 Pac. 672.

<sup>34</sup> Bennett v. Kistler, 163 N. Y. Supp. 555.

<sup>35</sup> Hunter v. Harris, 63 Ore. 505, 127 Pac. 786.

## CHAPTER XXI—A.

### NEGOTIABLE INSTRUMENTS WITH COLLATERAL SECURITY.

- § 227b. Meaning of term collateral security.
- 227c. Form of promissory note with collateral security.
- 227d. Holder of collateral security a holder for value—when transfer is for debt created at time of transfer.
- 227e. Holder of collateral security a holder for value—when transfer is for a pre-existing debt.
- 227f. Holder of collateral security a holder for value—when transfer is as collateral for a debt not yet due.
- 227g. Presumption as to ownership.
- 227h. Whether or not note secured by collateral is negotiable.
- 227i. Whether or not collateral note or bill is negotiable.
- 227j. Effect of agreement for delay.
- 227k. Provision for deposit of additional collateral.
- 227l. Proviso in note authorizing sale of collaterals.
- 227m. What amounts to payment.
- 227n. In some jurisdictions by statute, the surrender of collateral discharges indorser.
- § 227o. Holder receiving collateral not required to proceed upon same before suing indorser.
- 227p. Collateral security must be exhibited.
- 227q. Right of maker to claim a defense because holder has collateral security.
- 227r. Amount of recovery on collateral security.
- 227s. Rights of indorsee as to stipulations in collateral note.
- 227t. Whether surrender of collateral discharges surety.
- 227u. Whether surrender of collateral discharges guarantor.
- 227v. Effect upon necessity of presentment, protest, and notice as to drawer or indorser when they are in possession of security.
- 227w. Accommodation paper as collateral security.
- 227x. Collateral released or lost.
- 227y. Miscellaneous.
- 227z. Form of guaranty of collateral note.
- 227aa. Form of note with transfer of account.

§ 227b. Meaning of term collateral security. Collateral security in its broad sense means any security in addition to the original obligation or security.<sup>1</sup> Accepted bills of exchange<sup>2</sup> and promissory notes<sup>3</sup> may be held as collateral security; they may

<sup>1</sup> *Schnitzler v. Wichita Fourth National Bank*, 1 Kan. App. 674, 42 Pac. 496.

<sup>2</sup> *Cornwell v. Baldwin's Bank*, 12 N. Y. App. Div. 227, 43 N. Y. Supp. 771.

<sup>3</sup> *Wright v. Ross*, 36 Calif. 414; *Polhemus v. Prudential Realty Corporation*, 74 N. J. L. 570, 67 Atl. 303.

be given to secure the payment of another bill or note being an additional obligation, that is, a separate obligation attached to another obligation to guarantee its payment.<sup>4</sup> As applied to the law of negotiable instruments collateral security in its perfect state is said to be a separate obligation, as the negotiable bill of exchange or promissory note of a third person, or other representative of value, indorsed, where necessary, and delivered by a debtor to his creditor, to secure the payment of his own obligation, represented by an independent instrument.<sup>5</sup> Collateral security is a concurrent security to the holder of the original obligation whether antecedent or newly created and is designed only to increase the means of the holder to realize the principal debt which it is given to secure.<sup>6</sup> It has been stated that the use of the term "collateral security" is intended to express, that it is not received in payment of the principal debt, and that it is not an additional right to which the creditor is absolutely entitled.<sup>7</sup>

Thus, collateral security is a separate obligation, as the negotiable bill of exchange or promissory note of a third person, delivered by a debtor to his creditor to secure the payment of his own obligation represented by an independent instrument as a bill of exchange or promissory note;<sup>8</sup> it is security for the fulfillment of a pecuniary obligation or payment of money in addition to the principal security; the collateral security stands with the principal promise as a cumulative means for securing the payment of the obligation;<sup>9</sup> it is subsidiary to the principal debt—running parallel with it—collateral to it—and when collected, is to go to the credit of the principal debt; or if the principal debt be paid off, the debtor is usually entitled to a restoration of the collateral security.<sup>10</sup>

Interpreted in the terms of negotiable instruments, a negotiable bill or note given as collateral security to another negotiable bill or note, known as the principal obligation, is concurrent security for said principal bill or note and is designed to increase the means of the holder of said principal bill or note to realize on said bill or note which it is given to secure; it is sub-

<sup>4</sup> *Butler v. Rockwell*, 14 Colo. 125, 136, 23 P. 462; *Schnitzler v. Wichita Fourth National Bank*, 1 Kan. App. 674, 42 P. 496, 500.

<sup>5</sup> *International Trust Company v. Union Cattle Company*, 3 Wyo. 803.

<sup>6</sup> *Osborne v. Stringham*, 4 S. D. 593, 598, 57 N. W. 776.

<sup>7</sup> *McCormick v. Falls City Bank*,

57 Fed. 107, 110, 9 U. S. App. 203, 6 C. C. A. 683.

<sup>8</sup> *International Trust Company v. Union Cattle Co.*, 3 Wyo. 803, 804; 31 Pac. 408, 19 L. R. A. 640.

<sup>9</sup> *Moffatt v. Corning*, 14 Colo. 104, 123, 24 Pac. 7.

<sup>10</sup> *Munn v. McDonald*, 10 Watts (Pa.) 270, 273; *McCormick v. Falls City Bank*, 57 Fed. 107.

sidiary to said principal bill or note, that is, collateral to it and when collected is to go to the payment of said principal bill or note.

§ 227c. Form of promissory note with collateral security. The following is a form of promissory note with collateral security:

\$----- No.----- Due-----  
 INDIANAPOLIS, IND.-----  
 -----days after date  
 -----promise to pay to the order of the CITY TRUST BANK  
 of Indianapolis, Indiana.  
 ----- Dollars,  
 Negotiable and Payable at the office of the CITY TRUST BANK  
 of Indianapolis, .

*With five per cent. Attorney's fees upon the principal of this note. Value received, without any relief whatever from Valuation or Appraisement laws of the State of Indiana. With interest at the rate of eight per cent. per annum after maturity until paid. The drawers and endorsers severally waive presentment for payment, protest, notice of protest and notice of non-payment of this note.*

Address -----  
 -----have transferred and delivered to the CITY TRUST  
 BANK of Indianapolis, Ind., as Collateral Security for the pay-  
 ment of this and of any other liabilities of the undersigned to said  
 payee, or assigns, due or to become due, or that may hereafter  
 be contracted, the following property, the value of which is  
 ----- Dollars,  
 viz: -----

*And the Undersigned hereby gives the said Payee and Assigns authority to sell and to transfer and assign the said property, or any part thereof, or any substitutes therefor, and all additions thereto, on the maturity of the above note, or any time thereafter, or before in the event of the said security depreciating in value, at any public or private sale without advertising the same, or demanding payment or giving notice, with the right to said payee and assigns themselves to be the purchasers, when sale is made at any broker's board or public sale. And, after deducting all costs and expenses to apply the residue to the payment of any, either or all liabilities as aforesaid, as said payee or assignee shall elect, returning the overplus to the under-*

*signed, and in case the proceeds of the sale of said property shall not cover the principal, interest and expenses, the undersigned engages to pay the deficiency forthwith after such sale, with legal interest.*

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**§ 227d. Holder of collateral security a holder for value—**  
**When transfer is for debt created at time of transfer.** The holder of a negotiable instrument as collateral security for a debt contracted at the time of the transfer is a *bona fide* holder for value, provided the bill or note transferred as collateral security is itself not overdue at the time, thus the indorsee of a collateral instrument executed by a third party is a holder for value, if said instrument is indorsed as collateral security for a debt contracted at the time of such indorsement; this is true whether the bill or note of said third party is payable to order or is payable to bearer. But in no case, however, should the collateral instrument be overdue at the time of its transfer.<sup>11</sup>

A creditor who receives the bill or note of a third party from his debtor as collateral security for his debt is entitled to the full protection of a *bona fide* holder for value, free from all equities which might have been pleaded between the original parties.<sup>12</sup>

**§ 227e. Holder of collateral security a holder for value—**  
**When transfer is for a pre-existing debt.** Prior to the adoption of the Negotiable Instruments Law in the various jurisdictions there was much conflict of authority as to whether one who takes a note merely as collateral security for a pre-existing debt is a holder for value. Since the adoption of the Law such holder is generally regarded as a holder for value.<sup>13</sup>

Under the Wisconsin negotiable instruments law, however, "*the indorsement or delivery of negotiable paper as collateral security for a pre-existing debt, without other consideration, and not in pursuance of an agreement at the time of delivery by the maker, does not constitute value.*"<sup>14</sup>

**§ 227f. Holder of collateral security a holder for value—**  
**When transfer is as collateral for a debt not yet due.** If the debt is not due and the collateral bill or note is indorsed as

<sup>11</sup> Texas Banking Co. v. Turnley, 61 Tex. 369; Best v. Crall, 23 Kan. 482; Miller v. Boykin, 70 Ala. 476.

<sup>12</sup> Bank of Commerce v. Wright, 63 Ark. 604, 40 S. W. 81. *Contra*, Thompson v. Maddux, 117 Ala. 468, 23 So. 157.

<sup>13</sup> Melton v. Pensaloca Bank & Trust Co., 190 Fed. 126, 111 C. C. A. 166; Voss v. Chamberlain, 139 Iowa 569, 117 N. W. 269, 19 L. R. A. (N. S.) 106, 130 A. St. Rep. 331.

<sup>14</sup> Neg. Inst. Law (Wis.), §§ 1675-71.



security and there is an agreement for delay until the collateral matures, such agreement constitutes a consideration and makes the holder a holder for value.

But if the debt is due and there is no agreement for delay, the holder will not be protected against equities.<sup>15</sup>

**§ 227g. Presumption as to ownership.** If the collateral negotiable instrument is transferable by delivery, that is, by being payable to bearer or having a blank indorsement, the holder is *prima facie* proprietor and owner. But if it is payable to order and unindorsed, the holder has only the equitable title and cannot claim the rights of an indorsee.<sup>16</sup>

**§ 227h. Whether or not note secured by collateral is negotiable.** A promissory note which contains a statement to the effect that the maker has deposited collateral security for its payment does not make it non-negotiable; although it may appear on the face of the note that its payment is secured by collateral consisting of personal property or a mortgage on real property, yet if otherwise in proper form, it is negotiable.<sup>17</sup> And a note is negotiable which contains a recital that on non-payment, the holder may sell the collateral and apply the proceeds to "payment and necessary charges." So a stipulation in a note whereby the legal title to the property for which it was given, as security for payment, is in the holder of the collateral, has been held not to make the note non-negotiable;<sup>18</sup> and also the negotiability of a note made payable to a bank is not affected by a stipulation therein authorizing the bank to appropriate to the payment of the note any money that the maker may have in the bank,<sup>19</sup> and it has been held that a stipulation in a note payable on demand, giving the bank power to sell the collateral before the maturity of the note, in the event the securities depreciate in value, does not change the promise to pay "on demand" so as to make the note non-negotiable.<sup>20</sup>

<sup>15</sup> Bone v. Tharp, 63 Iowa 224.

<sup>16</sup> Bank of Chadron v. Anderson, 6 Wyo. 520, 48 Pac. 197.

<sup>17</sup> Valley National Bank v. Crowell, 148 Pa. St. 284, 23 Atl. Rep. 1068; Farmer v. First National Bank of Malvern, 89 Ark. 132, 115 S. W. 1141, 131 A. S. R. 79; Dorsey v. Wolff, 142 Ill. 589, 32 N. E. 495, 34 A. S. R. 99, 18 L. R. A. 428; Albertson v. Laughlin, 173 Pa. St. 525, 34 Atl. 216, 51 A. S. R. 177, Ann. Cas. 1912D 9 note.

<sup>18</sup> First National Bank v. Slaugh-

ter, 98 Ala. 602 14 So. Rep. 545, 39 Am. St. Rep. 88; Heard v. Dubuque Co. Bank, 8 Neb. 10, 30 Am. Rep. 811; Third National Bank v. Bowman-Spring Co., 50 App. Div. 66, 64 N. Y. Supp. 410.

<sup>19</sup> Louisville Banking Co. v. Gray, 123 Ala. 251, 26 So. 205, 82 A. S. R. 120; Louisville Banking Co. v. Howard, 123 Ala. 380, 26 So. 207, 82 A. S. R. 126.

<sup>20</sup> Brinden v. Muskegon Savings Bank (Mich.), 140 N. W. Rep. 549.

A statement that the collateral security has been deposited for the performance of the promise contained in the note has been held not to affect its negotiability;<sup>21</sup> but, a stipulation in a note that the title to property for which the note is given shall remain in the payee, and he shall have the right to declare the money due and take possession of the property whenever he may deem himself insecure, "even before the maturity of the note" renders the note non-negotiable;<sup>22</sup> so, also a stipulation that the payee may sell certain warehouse receipts given as collateral, and if they depreciate in value, may sell them before the instrument would otherwise become due makes the note non-negotiable because such alternative introduces elements of uncertainty.<sup>23</sup>

And a promissory note is not certain as to terms and therefore non-negotiable which contains an agreement to pay a sum certain as the purchase price of property sold, with an option on the part of the payee to take possession of the property in case of default in payment;<sup>24</sup> and if a mortgage note incorporates by reference provisions of the mortgage requiring something to be done in addition to the payment of money it is non-negotiable.<sup>25</sup>

§ 227i. Whether or not collateral note or bill is negotiable. Securities given as collateral to negotiable paper are held in most jurisdictions to partake of the negotiability of the instrument secured to the exclusion of defenses by the maker as against *bona fide* purchasers of the note and security;<sup>26</sup> in some jurisdictions, however, a different rule maintains,<sup>27</sup> and notes which are themselves given as collateral security are held non-negotiable.<sup>28</sup>

The effect on the negotiability of a note of a reference therein to another instrument, collateral thereto, securing it, often depends on whether the note and security are to be construed together.<sup>29</sup>

<sup>21</sup> *Wise v. Charlton*, 4 A. & E. 486; *Fancourt v. Thorne*, 9 Q. B. 312.

<sup>22</sup> *Kimpton v. Studebaker Brothers Co.*, 14 Idaho 552, 94 Pac. 1039, 125 Am. St. Rep. 185.

<sup>23</sup> *Continental National Bank v. Wells*, 73 Wis. 332, 41 N. W. 409; *Cushman v. Haynes*, 37 Mass. (20 Pick.) 132.

<sup>24</sup> *Wright v. Traver*, 73 Mich. 493, 41 N. W. 517, 3 L. R. A. 50.

<sup>25</sup> *Bright v. Offield*, 81 Wash. 443.

<sup>26</sup> *Gabbert v. Schwartz*, 69 Ind.

450; *Craft v. Bunster*, 9 Wis. 503; *Hamilton v. Fowler*, 99 Fed. 18, 40 C. C. A. 47; *Thompson v. Maddux*, 117 Ala. 468, 23 So. 157.

<sup>27</sup> *Baily v. Smith*, 14 Ohio St. 396, 84 Am. Dec. 385; *Watkins v. Goessler*, 65 Minn. 118, 67 N. W. 796; *Butler v. Slocumb*, 33 La. Ann. 170, 39 Am. Rep. 265.

<sup>28</sup> *American National Bank v. Sprague*, 14 R. I. 410; *Costelo v. Crowell*, 127 Mass. 293, 34 Am. Rep. 367.

<sup>29</sup> 32 L. R. A. (N. S.) 858, note.

A memorandum on a note that the same was issued as collateral to A's draft accepted by B has been held to make the note non-negotiable because not payable at all events since payment of the draft would discharge the maker and indorsers of the note and render the note null and void;<sup>30</sup> so also is a promissory note which states that it is to be held as collateral security for the payment of certain debts of a third person;<sup>31</sup> and a statement that the note is "given as collateral security with agreement" has been held to make the note non-negotiable.<sup>32</sup>

**§ 227j. Effect of agreement for delay.** There is no extension of a bill or note, so as to postpone suit or as to discharge indorsers or sureties, whether another bill or note, either of the maker or a third person, is taken merely as collateral security, and there is no agreement postponing the remedy, although indulgence may in fact be granted;<sup>33</sup> it is otherwise, however, if there is an agreement for delay.<sup>34</sup>

If a bill, note or check taken as collateral security is payable at a future day to the original obligation, there arises an implication of agreement for delay until its maturity. The holder may show, however, that it was agreed that there should be no delay, or that the remedy against the drawer or indorser was reserved;<sup>35</sup> but when the debt is not yet due and the collateral instrument is indorsed as security with an agreement that there shall be a delay until the collateral shall mature, such agreement by the creditor constitutes a consideration and makes the indorsee a *bona fide* holder for value,<sup>36</sup> and has been held to create an extension of time so as to discharge sureties or indorsers; the receipt of collateral security by the holder, from the maker or acceptor, with agreement to apply the proceeds to payment of the bill or note will not in anywise affect the rights of the holder against the drawer or indorsers, provided it is not accompanied by any stipulation for indulgence or delay.<sup>37</sup>

<sup>30</sup> American National Bank v. Sprague, 14 R. I. 411; Gibson v. Hawkins, 69 Ga. 354; Haskell v. Lambert, 16 Gray 592.

<sup>31</sup> Haskell v. Lambert, 16 Gray (Mass.) 592; American National Bank v. Sprague, 14 R. I. 410.

<sup>32</sup> Costello v. Crowell, 127 Mass. 293.

<sup>33</sup> Cary v. White, 52 N. Y. 138; Cooper v. Gibbs, 4 McLean (U. S.) 396, 6 Fed. Cas. No. 3,194.

<sup>34</sup> Martin v. Bell, 18 N. J. L. 167.

<sup>35</sup> Pomeroy v. Tanner, 70 N. Y. 547.

<sup>36</sup> Daniel, § 825.

<sup>37</sup> Cary v. White, 52 N. Y. 138; Bank v. Matson, 99 Tenn. 390, 41 S. W. 1062; Hoover v. McCormick, 84 Wis. 215, 54 N. W. 505; Dodson v. Taylor, 56 N. J. L. 11, 28 Atl. 316.

§ 227k. **Provision for deposit of additional collateral.** Some jurisdictions hold, that a promissory note with an agreement therein that if there is any depreciation before the note matures, in the collateral security, the holder may require further security, is not negotiable.<sup>38</sup> And it has been held that when there is a stipulation in a note, that in case of depreciation the maker shall deposit additional securities and in the event of default of such deposit, the principal obligation shall become due and payable, the stipulation makes the note non-negotiable.<sup>39</sup>

§ 227l. **Proviso in note authorizing sale of collaterals.** The Negotiable Instruments Law provides as follows:

*"The negotiable character of an instrument otherwise negotiable is not affected by a provision which authorizes the sale of collateral securities in case the instrument be not paid at maturity."*<sup>40</sup>

It often happens that notes of this character are non-negotiable because of provisions as to the time of payment, or because of provisions requiring something to be done in addition to the payment of money; but a statement that collateral security has been deposited for the performance of the promise contained in the instrument is only a recital which does not affect its negotiability. And a provision merely authorizing the sale of the collateral, if the note is dishonored, does not make the note non-negotiable.<sup>41</sup>

Thus a promissory note does not lose its negotiable character because it recites that the maker has deposited collateral security for its payment which he agrees may be sold in a certain manner.<sup>42</sup>

§ 227m. **What amounts to payment.** The mere acceptance of collateral security does not operate as a payment,<sup>43</sup> but payment and satisfaction of the security operates as a payment of the instrument secured.<sup>44</sup>

An agreement to rely on the collateral security may amount to a payment; thus where a bank, at which an instrument secured

<sup>38</sup> Lincoln National Bank v. Perry, 32 U. S. App. 15, 66 Fed. 887, 14 C. C. A. 273.

<sup>39</sup> Holiday State Bank v. Hoffman, 85 Kans. 71; Hibernia Bank & Trust Co. v. Dresser, 132 La. 532. *Contra*, Finley v. Smith, 165 Ky. 445; Kennedy v. Broderick, 216 Fed. Rep. 137, 132 C. C. A. 381.

<sup>40</sup> Neg. Inst. Law, § 5, subd. 1.

<sup>41</sup> Perry v. Bigelow, 128 Mass. 129.

<sup>42</sup> Bank of Carroll v. Taylor, 67 Iowa 572, 25 N. W. 810; Duncan v. City of Louisville, 13 Bush (Ky.) 378, 26 Am. Rep. 201.

<sup>43</sup> Hook v. White, 36 Cal. 299.

<sup>44</sup> Sampson v. Fox, 109 Ala. 662, 19 So. 896, 55 Am. St. Rep. 950; Kent v. May, 13 Mich. 38.

by chattel mortgage was payable, agreed that it would look to the mortgaged property alone, the maker was released, if at the date of such agreement such property was sufficient to pay the note, notwithstanding it had depreciated in value at the time the mortgage was foreclosed.<sup>45</sup>

§ 227n. In some jurisdictions by statute, the surrender of collateral discharges indorser. In at least one jurisdiction, namely, that of the state of Wisconsin, the Negotiable Instruments Law provides that "*a person secondarily liable on the instrument is discharged by giving up or applying to other purposes collateral security applicable to the debt.*"<sup>46</sup>

By judicial interpretation of the above statute it has been determined that the surety is discharged only to the extent corresponding with the value of the security given up or applied to other purposes.<sup>47</sup>

§ 227o. Holder receiving collateral not required to proceed upon same before suing indorser. The holder who has received collateral from the maker is not required to proceed on the collateral before suing the indorser.<sup>48</sup>

§ 227p. Collateral security must be exhibited. The collateral security must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. That is, the maker is entitled to require that the collateral be tendered with the note or the demand of payment will not be sufficient and the maker may require that the collateral be delivered with the note.<sup>49</sup>

§ 227q. Right of maker to claim a defense because holder has collateral security. Although the holder may have other collateral securities for the same debt more than sufficient to cover it, from which, however, the debt had not been realized, yet, such fact does not furnish a good defense that the maker may take advantage of.<sup>50</sup>

And if the indorser has deposited with the holder security for the payment of the note the maker can not claim it as a defense when proceeded against by the holder.<sup>51</sup>

<sup>45</sup> First National Bank v. Watkins, 154 Mass. 385, 28 N. E. 275.

<sup>46</sup> Neg. Inst. Law (Wis.), § 1679—1, Sub. Div. 4A. See also Rogers v. School Trustees, 46 Ill. 428; Union National Bank v. Cooley, 27 La. Ann. 202.

<sup>47</sup> State Bank of La Crosse v. Michel, 152 Wis. 88.

<sup>48</sup> Buck v. Freehold Bank, 37 N. J. Law 307.

<sup>49</sup> Ocean National Bank v. Fant, 50 N. Y. 474.

<sup>50</sup> Lord v. Ocean Bank, 20 Pa. St. 384.

<sup>51</sup> People's National Bank v. Rice, 149 App. Div. (N. Y.) 18.

**§ 227r. Amount of recovery on collateral security.** The holder is limited as to the amount he may recover on the collateral security to the amount of the debt which it secures,<sup>53</sup> and even though the debt secured by the collateral is less in amount than the collateral, yet if there is no defense to the collateral note, the holder is generally entitled to recover the full amount holding the balance in trust,<sup>53</sup> and if the instrument has been fraudulently pledged to a holder in good faith, the real owner may pay that debt and be entitled to receive the instrument.<sup>54</sup>

**§ 227s. Rights of indorsee as to stipulations in collateral note.** A provision in a collateral note that the collateral security was deposited for the payment of the original obligation or any other liability of the maker to the holder runs in favor of the indorsee and the security may be applied to the payment of an indebtedness due from the maker to an indorsee, as such a provision tended to facilitate the negotiation of the paper.<sup>55</sup>

**§ 227t. Whether surrender of collateral discharges surety.** If any collateral security which the creditor held be released, it is held that the surety is discharged,<sup>56</sup> but the surety will not be discharged in any case where it can be clearly established that the parting with the security has worked no real injury. And he is discharged only to the extent that he would be injured if held bound.<sup>57</sup>

**§ 227u. Whether surrender of collateral discharges guarantor.** In some jurisdictions it is held that a guarantor is discharged if the holder surrenders to the principal debtor, or other party to the paper, collateral securities which he holds as security for the guaranteed debt. The theory of this rule is that by subrogation, the guarantor has a vested interest in the collateral security, which cannot be jeopardized or destroyed without his discharge from his liability.<sup>58</sup>

In other jurisdictions it is held that the guarantor will be discharged to the extent of the value of the collaterals surrendered or the security released.<sup>58a</sup>

<sup>53</sup> Hardy v. Sibley, 46 Ohio St. 15; Duncan & Sherman v. Gilbert, 30 N. J. L. 527; Fisher v. Fisher, 98 Mass. 303.

<sup>53</sup> Toole v. Newman, 75 Ill. 215.

<sup>54</sup> Stoddard v. Kimball, 6 Cush. 469; Chicopee Bank v. Chapin, 8 Metc. (Mass.) 40.

<sup>55</sup> Oleon v. Rosenbloom, 247 Pa. St. 250.

<sup>56</sup> Shutts v. Fingar, 100 N. Y.

539; Allen v. O'Donald, 23 Fed. 573; Mayhew v. Boyd, 5 Md. 102.

<sup>57</sup> Payne v. Commercial Bank, 6 Smedes & M. 24.

<sup>58</sup> Holland v. Johnson, 51 Ind. 346; Hayes v. Ward, 4 Johns. Ch. 123, 8 Am. Dec. 554.

<sup>58a</sup> Foerderer v. Moors, 91 Fed. 476, 33 C. C. A. 641; Holmes v. Williams, 177 Ill. 386, 53 N. E. 93.

§ 227v. **Effect upon necessity of presentment, protest and notice as to drawer or indorser when they are in possession of security.** The weight of authority is to the effect that the possession before maturity of security or the possession of the property of the primary obligor by the drawer or an indorser excuses the holder of the instrument from presentment, protest and notice, as to such drawer or indorser; thus if the indorser receives collateral security from the maker or other party for whose benefit the instrument was executed he is bound without demand and notice, provided, however, the security received was full or comprised all the maker's property;<sup>50</sup> and notice of dishonor is waived when the indorser, before maturity, has taken collateral security sufficient to cover his contingent liability or has taken an assignment of all the estate of the maker for the purpose of meeting his responsibilities;<sup>51</sup> but the taking of insufficient security is not a waiver of notice.<sup>51</sup>

In some jurisdictions an indorser is entitled to notice regardless of the collateral taken, so long as the maker of the note remains primarily liable.<sup>52</sup>

If the bill or note has been transferred to the holder by mere delivery without indorsement, as collateral security, the transferer is not entitled to insist on a strict presentment at maturity to the maker or acceptor; nor will he be released from the debt for which the bill or note is delivered as collateral security unless he can show that he has actually sustained damage or prejudice by such non-presentment.<sup>53</sup>

There is a conflict among the authorities as to whether when a transferrer indorses a bill or note merely as collateral security for or on account of a precedent debt, without any new consideration therefor, he is entitled to require strict presentment and notice as an indorser. Some jurisdictions maintain that the responsibility of the creditor is limited to the loss occasioned by his negligence in respect to presentment and notice;<sup>54</sup> the contrary view is better, that is, the indorsee of a collateral bill or note should discharge a holder's duties, for the legal effect of taking a bill or note as collateral security is, that if, when the

<sup>50</sup> Daniel, § 1428.

<sup>51</sup> Prentiss v. Danielson, 5 Conn. 175, 13 Am. Dec. 52; Mead v. Small, 2 Me. 207, 11 Am. Dec. 62; Perry v. Green, 19 N. J. L. 61, 38 Am. Dec. 536.

<sup>52</sup> Olendorf v. Swartz, 5 Cal. 480, 63 Am. Dec. 141; Burrows v. Han-

negan, 1 McLean (U. S.) 309, 4 Fed. Cas. 2,205.

<sup>53</sup> Kramer v. Sandford, 4 Watts & S. (Pa.) 328, 331, 39 Am. Dec. 92; Wilson v. Senier, 14 Wis. 38.

<sup>54</sup> Van Wart v. Wooley, 3 B. & C. 439.

<sup>55</sup> Westphal v. Ludlow, 6 Fed. 348, 2 Am. Lead. Cas. 260.

bill or note arrives at maturity, the holder is guilty of laches, and omits duly to present it, and to give notice of its dishonor, the bill becomes money in his hands, as between him and the person from whom he received it.<sup>65</sup>

**§ 227w. Accommodation paper as collateral security.** Accommodation paper may be used as collateral security and unless the transferrer in addition to knowing that it is accommodation paper, knows also that such use is restricted, he can recover upon it.<sup>66</sup>

Accommodation makers or indorsers of negotiable paper are not liable to a holder thereof, where the same has been fraudulently diverted from the purpose for which it was made or the indorsement given, and the holder has received it solely as collateral security for an antecedent debt.<sup>67</sup>

The maker of an accommodation note cannot set up the want of consideration as a defense against it in the hands of a third person, though it be there as collateral security merely.<sup>68</sup>

**§ 227x. Collateral released or lost.** If a creditor, having in his hands collateral security, relinquishes or loses it by his wilful acts or through his negligence, the surety will be discharged.<sup>69</sup>

A surety is not released by delay on the part of the creditor in enforcing collateral security for the debt; and the creditor or obligee is not required to resort to such other security to enforce the payment of his claim.<sup>70</sup>

**§ 227y. Miscellaneous.** A guarantee has no right to surrender to the debtor, collateral securities held by him, and if he does so without the guarantor's consent or if he releases other security, the guarantor will be discharged to the extent of the value of the collaterals surrendered or the security released.<sup>71</sup>

<sup>65</sup> *Peacock v. Pursell*, 14 C. B. (N. S.) 728; *Rumsey v. Laidley*, 34 W. Va. 721, 12 S. E. 866, 26 Am. St. Rep. 935.

<sup>66</sup> *Dunn v. Western*, 71 Me. 270; *Continental National Bank v. Townsend*, 87 N. Y. 8.

<sup>67</sup> *Sutherland v. Mead*, 80 N. Y. S. 504, 80 App. Div. 103.

<sup>68</sup> *Lord v. Ocean Bank*, 20 Pa. St. 384; *Miller v. Larned*, 103 Ill. 579. *Contra*, *Boykin v. Bank of Mobile*, 72 Ala. 262, 47 Atl. Rep. 411.

<sup>69</sup> *Parsons v. Harrold*, 46 W. Va.

122, 32 S. E. 1002; *Otis v. Von Starch*, 15 R. I. 41, 23 Atl. 39; *Griffeth v. Moss*, 94 Ga. 199, 21 S. E. 463.

<sup>70</sup> *Thorn v. Pinkham*, 84 Me. 101, 24 Atl. 718, 30 Am. St. Rep. 335; *Jones v. Tinch*, 15 Ind. 308, 77 Am. Dec. 92; *Osborne v. Smith*, 18 Fed. 126, 5 McCrary 487.

<sup>71</sup> *Foerderer v. Moors*, 91 Fed. 476, 33 C. C. A. 641; *Holmes v. Williams*, 177 Ill. 386, 53 N. E. 93; *Lancaster First National Bank v. Shreiner*, 110 Pa. St. 188, 20 Atl. 718.



A transferee taking collateral by way of substitution for other collateral surrendered becomes a holder for value.<sup>73</sup>

Though the holder have in his hands collateral security for the payment of the instrument, the indorser cannot compel him to sue the maker or to enforce his security. If the indorser desires the benefit of any security held by the creditor, he must pay the debt, fulfill the contract and enforce his right of subrogation to such securities.<sup>73</sup>

Where one security is accepted by the creditor in satisfaction of another, the debt evidenced by the latter is discharged;<sup>74</sup> but one merely taking a security as collateral for a pre-existing debt does not discharge the debt unless it is paid or the debtor is injured by the laches of the creditor;<sup>75</sup> payment to the creditor of collateral held as security for the debt, or a sale of it and the appropriation of the proceeds by the creditors, operates as a satisfaction of the debt; and where the amount received is less than the debt it will be considered as satisfaction *pro tanto*;<sup>76</sup> and if the creditor converts the security so as to be unable to deliver it when the debtor is willing to pay, the amount thereof must be credited upon the debt.<sup>77</sup>

The fact that plaintiff holds collateral security for the note in suit or that he has been so negligent in disposing of such collateral that the maker would have a cause of action against him therefor, is not a good defense to an action at law;<sup>78</sup> that a bill or note was given as collateral security and without valuable consideration is a good defense as between the parties privy to it, that is, the consideration is open to inquiry.

<sup>73</sup> Voss v. Chamberlain, 139 Iowa 569, 117 N. W. 269.

<sup>73</sup> First National Bank v. Wood, 71 N. Y. 405; German-American Bank v. Milliman, 31 N. Y. Misc. 87, 65 N. Y. Supp. 242.

<sup>74</sup> Fidelity Insurance etc. v. Shenandoah Valley Railroad Co., 86 Va. 1, 9 S. E. 759, 19 Am. St. Rep. 858.

<sup>75</sup> Dugan v. Sprague, 2 Ind. 600; Day v. Neal, 14 Johns. 404; Dickinson v. King, 28 Vt. 378.

<sup>76</sup> Levy v. Chicago National Bank,

158 Ill. 88, 42 N. E. 129, 30 L. R. A. 380; Farnsley v. Anderson Foundry etc. Works, 90 Ind. 120; Hunt v. Nevers, 15 Pick. 500, 26 Am. Dec. 616; Dismukes v. Wright, 20 N. C. 74.

<sup>77</sup> Ashton's Appeal, 73 Pa. St. 153.

<sup>78</sup> Taggard v. Curtenius, 15 Wend. 155; Ambler v. Ames, 1 App. Cas. (D. C.) 191; Carson v. Buckstaff, 57 Neb. 262, 77 N. W. 670.

<sup>79</sup> Leighton v. Bowen, 75 Me. 504.

§ 227z. Form of guaranty of collateral note. The following is a form of a guaranty of a collateral note:

GUARANTY OF COLLATERAL NOTE.

IN CONSIDERATION of One Dollar (\$1.00) and other valuable consideration paid to the undersigned, the receipt of which is hereby acknowledged, and of the making, at the request of the undersigned, of the loan evidenced by the within note and contract, the undersigned hereby jointly and severally guarantee to the CITY TRUST BANK, of Indianapolis, its successors, endorser or assigns, the punctual payment, at maturity, of the said note and contract and of the said loan, and hereby assent to all the terms and conditions of the said note and contract, especially agreeing that so long as the maker is bound by the said note and contract and the conditions therein contained, that he will remain bound—waiving any defenses that the maker or makers could not maintain as maker.

The undersigned hereby waives demand of payment, and also waives the protest, and notice of protest of the within note.

§ 227aa. Form of note with transfer of account. The following is a form of a promissory note with collateral security in the form of the transfer of an account:

NOTE WITH TRANSFER OF ACCOUNT.

\$----- (Place) Date  
On demand after date we promise to pay to the order of

THE CITY TRUST BANK

of Indianapolis

----- DOLLARS  
at the office of the CITY TRUST BANK, of Indianapolis, value received with interest.

Per -----

To secure the payment of this note and for value received we hereby sell, transfer and assign to the CITY TRUST BANK, our right, title and interest in the account mentioned herein, viz.: -----, and we hereby constitute ourselves as the Agents for the said CITY TRUST BANK, for the purpose of collecting this account, and agree to turn over to the said CITY TRUST BANK, of Indianapolis, the proceeds of said account as soon as collected.

## CHAPTER XXI—B.

### WHO MAY SUE—WHO MAY BE SUED.

§ 227bb. In general.	§ 227hh. Payee.
227cc. Party in interest.	227ii. Drawer.
227dd. Holder may sue when another is entitled to proceeds.	227jj. Agent.
227ee. Instruments payable to bearer or indorsed in blank.	227kk. Public officials.
227ff. Acceptor.	227ll. Holder of instrument for collection.
227gg. Drawee.	227mm. Who may sue—Miscellaneous.
	227nn. Parties to actions—Defendants.

§ 227bb. **Who may sue—In general.** The statutes today largely determine as to who may sue on negotiable instruments. Those states which have adopted the Negotiable Instruments Law are governed by provisions of that law and in it there is an express provision that the holder of a negotiable instrument may sue in his own name and it defines the holder as the payee or the indorsee of a bill or a note in possession thereof or its bearer.<sup>1</sup>

These provisions are as follows: "*The holder of a negotiable instrument may sue thereon in his own name.*"<sup>2</sup>

"*Holder means the payee or indorsee of a bill or note, who is in possession of it or bearer thereof.*"<sup>3</sup>

Thus a holder is one to whom a negotiable instrument is negotiated, or to whom it is transferred by operation of law.

Possession of a negotiable instrument is *prima facie* evidence of the right of the holder to sue,<sup>4</sup> and as the term holder is now statutory and means the payee or indorsee of a bill or note who is in possession of it, or bearer thereof,<sup>5</sup> the holder may sue on it in his own name, that is, the payee or indorsee of negotiable paper who is entitled to receive the sum for which it calls, may sue on it in his own name.<sup>6</sup>

§ 227cc. **Party in interest.** One holding a full legal title to a negotiable instrument by transfer may maintain an action thereon against the maker notwithstanding he has no beneficial in-

<sup>1</sup> Schmidt v. Pegg, 172 Mich. 159, 137 N. W. 524; Dennis v. Coffin, 16 Pa. Dist. 311.

<sup>2</sup> Neg. Inst. Law, § 90.

<sup>3</sup> Neg. Inst. Law, § 191, sub. 7.

<sup>4</sup> Brennan v. Brennan, 122 Cal.

440, 55, p. 124, 68 Am. St. Rep. 46.

<sup>5</sup> Olson v. Rosenbloom, 247 Pa. St. 250.

<sup>6</sup> Olson v. Rosenbloom, 247 Pa. St. 250.

terest in the proceeds the transfer having been made to enable him to realize on the claim in the interest of the original payee.<sup>7</sup>

Where an instrument is payable to bearer or is indorsed in blank, proceedings may be had in the name of any person who is the holder of the instrument without being required to show an interest in it.<sup>8</sup>

Agents, receivers, assignees, trustees, heirs or personal representatives may sue on a note or bill payable to bearer, or indorsed in blank.<sup>9</sup>

In some jurisdictions there are statutes that every action must be prosecuted in the name of the real party in interest, except that an executor, administrator, or trustee of an express trust may sue without joining with him, the person for whose benefit the action is brought. These statutes have been construed as a rule so as to permit no defense to a party suing upon negotiable paper in order to show that the transfer, under which the party proceeding holds it, is without consideration or subject to equity between him and his assignor, or merely for purpose of collection or other like defense.<sup>10</sup>

§ 227dd. Holder may sue when another is entitled to proceeds. The owner and holder of a negotiable instrument may maintain an action to enforce collection thereof even though a third party may be entitled to the proceeds.<sup>11</sup>

Thus, where a promissory note was indorsed by the payee to a third party "for collection" for the account of the payee, the indorsee has such legal title as to authorize him to proceed in his own name, subject, however, to the same defenses that could be made to it in the hands of the original payee.<sup>12</sup>

However, some jurisdictions apparently limit the right of recovery to the real owner.<sup>13</sup>

Some jurisdictions maintain that an action may be had in the name of a person who is the beneficial owner of a part only of the instrument sued on, provided he holds the legal title.<sup>14</sup>

Since the legal title passes by gift regardless of the question of consideration, a donee may sue,<sup>15</sup> and a person holding col-

<sup>7</sup> Johnson v. Catlen, 27 Vt. 87, 62 Am. Dec. 622.

<sup>8</sup> Sterling v. Bender, 7 Ark. 201, 44 Am. Dec. 539; Hovey v. Selring, 24 Mich. 232, 9 Am. Rep. 122.

<sup>9</sup> Perry v. Wheeler, 63 Kan. 870, 66 Pac. Rep. 1007.

<sup>10</sup> Hays v. Hathorn, 74 N. Y. 488.

<sup>11</sup> Stanley v. Penny, 75 Kan. 179;

N. Haven Mfg. Co. v. N. Haven Pulp Co., 79 Conn. 127.

<sup>12</sup> Wilson v. Tolson, 79 Ga. 137.

<sup>13</sup> Rich v. Starbuck, 51 Ind. 87.

<sup>14</sup> Allensworth v. Moore, 3 Greene (Iowa) 273.

<sup>15</sup> Pritchard v. Hirt, 39 Hun (N. Y.) 378.

laterals for the benefit of creditors may sue;<sup>16</sup> also a receiver may sue;<sup>17</sup> and where a promissory note was attached and sold under an execution, the purchaser was entitled to sue in his own name without an indorsement to him.<sup>18</sup> The holder of a note although not the beneficial owner may sue in his own name by consent of the owner, and to do so may strike out his own as well as subsequent indorsements.<sup>19</sup> And the Negotiable Instruments Law has been construed to permit an action on a note by the party holding the legal title to it, although other parties are beneficially interested in it.<sup>20</sup>

**§ 227ee. Instruments payable to bearer or indorsed in blank.** A holder of a negotiable instrument payable to bearer or payable to order and indorsed in blank can sue on it in his own name.<sup>21</sup>

Any holder of a bill or note who can trace a good legal title to it may sue upon it in his own name whether or not he holds the beneficial interest in it. And the defendant can question the title of the holder only when necessary to preclude further liability upon the instrument or to let in a defense which he desires to set up.<sup>22</sup>

The holder may sue in his own name on an instrument which has been indorsed in blank regardless of the fact that subsequent indorsements appear on the instrument as these may be stricken out as unnecessary to make title.<sup>23</sup>

Where a negotiable instrument is payable to bearer, the original holder or someone to whom the legal title has been transferred by delivery must bring suit on the instrument.<sup>24</sup>

Where a negotiable instrument is in effect, payable to order, and has not been indorsed in blank, only the original payee or the person to whom the instrument has been indorsed can maintain an action upon it.<sup>25</sup>

The person in possession of a negotiable instrument is presumed to be the owner and holder thereof, and may sue thereon.<sup>26</sup>

<sup>16</sup> *Nelson v. Edwards*, 40 Barb. (N. Y.) 279.

<sup>17</sup> *Merchants Loan and Trust Co. v. Clair*, 36 Hun (N. Y.) 362.

<sup>18</sup> *Fishburn v. Londershonsen*, 50 Ore. 363, 92 Pac. 1060, 4 L. R. A. (N. S.) 1234, 15 Ann. Cas. 975.

<sup>19</sup> *Owens v. Storm*, 78 N. J. L. 154, 72 Atl. 441.

<sup>20</sup> *Owens v. Storms*, 78 N. J. L. 154, 72 Atl. 441; *Chaffee v. Sjarte* (Okla.), 148 Pac. 686.

<sup>21</sup> *Bank of British N. A. v. Barling*, 46 Fed. 356; *Keyser v. Shep-*

*herd*, 13 D. C. 66; *In re Wagner*, 11 D. C. 395; *Jump v. Leon* 192 Mass. 511, 78 N. E. 532, 116 Am. St. Rep. 265.

<sup>22</sup> *Ray v. Anderson*, 119 Ga. 962, 47 S. E. 205; *Boline v. Wilson*, 75 Kan. 829, 89 Pac. Rep. 678.

<sup>23</sup> *Habersham v. Lahman*, 63 Ga. 380.

<sup>24</sup> *Moore v. Maple*, 25 Ill. 341.

<sup>25</sup> *Spence v. Robinson*, 35 W. Va. 313, 13 S. E. 1,004.

<sup>26</sup> N. I. L., Secs. 16, 37, 51, 59, 191.

Delivery to enable the transferee to sue is enough to constitute him a proper plaintiff.<sup>27</sup>

The right to sue cannot be rebutted by proof that he has no beneficial interest, or by anything else but proof of bad faith.<sup>28</sup> Thus, if it were shown that a party suing upon such an instrument has no interest in it and is proceeding against the desire of the party beneficially interested, his conduct would be in bad faith and he could not recover.<sup>29</sup>

**§ 227ff. Acceptor.** An acceptor for honor of the drawer or indorser may sue them upon the bill itself.<sup>30</sup>

If an acceptor or maker for accommodation pays the bill, he cannot sue the drawer or indorser upon the bill, because, according to its terms, he is liable to them. But he may sue the accommodation party not upon the bill but for money paid at his request.<sup>31</sup>

**§ 227gg. Drawee.** The drawee of a bill of exchange may sue the drawer and indorser before the bill has been dishonored if he receives the same by indorsement.<sup>32</sup>

**§ 227hh. Payee.** A payee or indorsee may strike out his own and subsequent indorsements and sue in his own name,<sup>33</sup> as he may maintain an action for an instrument payable to his order without indorsing it as this is the same as making the instrument payable to the payee.<sup>34</sup>

A negotiable instrument payable to a fictitious payee is generally treated as payable to bearer and an action may be brought in the name of any person,<sup>35</sup> so also an instrument made payable to a person by a wrong name may be proceeded upon by such person in his right name.<sup>36</sup> And a payee may sue although he is only a part owner of the instrument.<sup>37</sup>

**§ 227ii. Drawer.** A drawer of a bill of exchange may sue the acceptor if he has had to pay the bill.<sup>38</sup> But the drawer

<sup>27</sup> *Brigham v. Marean*, 7 Pick. (Mass.) 40; *French v. Jarvis*, 29 Conn. 347.

<sup>28</sup> *Keenan v. Blue*, 240 Ill. 177, 88 N. E. 553.

<sup>29</sup> *Towne v. Mason*, 128 Mass. 517.

<sup>30</sup> *Parsons*.

<sup>31</sup> *Bell v. Norwood*, 7 La. 95; *Stark v. Alford*, 49 Tex. 260.

<sup>32</sup> *Swope v. Ross*, 40 Pa. 180, 80 Am. Dec. 567.

<sup>33</sup> *Owen & Co. v. Storms & Co.*, — N. J. —, 72 Atl. 441.

<sup>34</sup> *Durgin v. Bartol*, 64 Me. 473; *Davis v. Baker*, 71 Ga. 33.

<sup>35</sup> *Smith v. Clapp*, 15 Pet. 125, 10 L. Ed. 684.

<sup>36</sup> *Porter v. Kapiolane*, 18 Hawaii 299; *Neil v. Dillon*, 3 Mo. 59.

<sup>37</sup> *Lundberg v. N. W. Elevator Co.*, 42 Minn. 37, 43 N. W. 185.

<sup>38</sup> *Thurman v. Van Brunt*, 19 Barb. 410.

cannot sue the acceptor on a refusal to accept, for in such case the proceeding must be special on the contract to accept. And in general a drawer of a bill of exchange which is payable to his own order, or which has been taken up by him, may maintain an action thereon against the acceptor without an indorsement or after striking out the payee or any subsequent indorsement.<sup>39</sup>

§ 227jj. **Agent.** Where a negotiable instrument is made to an agent or a private corporation or association with the addition of any agency or office, he may sue upon it in his own name. The addition being merely *descriptio personae*.<sup>40</sup> Thus an agent may sue in his own name upon a negotiable instrument indorsed in blank.<sup>41</sup>

Indorsement of a negotiable instrument to an agent transfers title thereto as to all parties except his principal, and the agent may maintain an action thereon in his own name,<sup>42</sup> but when an express contract is made with an agent by a third person, the agent may maintain an action upon it, though he may be known to act as agent and though his principal may not be entitled to a like action on the contract.<sup>43</sup>

When a negotiable instrument is payable to a certain person by name, but describing him as agent of another person, as "John Wilson, agent for William Jackson," either the agent or principal may sue; but there are decisions to the contrary; and proof that the party suing is the mere agent of the holder, having neither title nor possession, but having before action brought, returned the instrument to his principal, will defeat the action though the agent sued in his own name by order of the principal.<sup>44</sup>

In case of a pledgee, the indorsement and delivery of a negotiable instrument passes the legal title to the holder with power to collect by suit or otherwise, subject to the rights of the indorser as to the application of proceeds.<sup>45</sup> The payee named in a negotiable instrument, or the holder of such instrument, may bring suit on it in his own name, although he holds such instrument as trustee for another and is expressly named in his

<sup>39</sup> Cooper v. Jones, 79 Ga. 379, 4 S. E. 916; Pilkington v. Woods, 10 Ind. 432.

<sup>40</sup> Johnson v. Catlin, 27 Vt. 87, 62 Am. Dec. 622.

<sup>41</sup> Pearce v. Austin, 4 Whart. (Pa.) 489, 34 Am. Dec. 523.

<sup>42</sup> Chase v. Burnham, 13 Vt. 447,

37 Am. Dec. 602; Poorman v. Mills, 35 Cal. 118, 95 Am. Dec. 90.

<sup>43</sup> Poor v. Guilford, 10 N. Y. 273, 61 Am. Dec. 749.

<sup>44</sup> Whitford v. Burchmyer, 1 Gill (Md.) 127, 39 Am. Dec. 640.

<sup>45</sup> Lamberton v. Windon, 12 Minn. 232, 90 Am. Dec. 301,

representative capacity as receiver, assignee in bankruptcy or insolvency or as guardian.<sup>46</sup>

**§ 227kk. Public officials.** A negotiable instrument made payable to a corporate officer or agent may be proceeded upon by the corporation as plaintiff;<sup>47</sup> and where a bill or note is made payable or is indorsed to a certain person, designated by his official title, suit may be brought in his name, or it may be brought in the name of the principal whom he officially represents, when the principal is named;<sup>48</sup> and if the principal be not named, evidence is admissible to show who the principal is.<sup>49</sup>

The government, federal, state or county, may bring suit in its own name on negotiable instruments belonging to it although it is made payable to one of its officers.<sup>50</sup>

When an instrument is made payable to a treasurer or cashier without the name of the corporation, and the corporation sues upon the instrument, it should be averred that it was made payable to the corporation by the name of the official, and then the production and possession of the instrument by the corporation is sufficient *prima facie* evidence for maintaining the suit.<sup>51</sup>

Where the negotiable instrument is made payable to designated officer without naming him, the action should be brought in the name of the holder of the office at the time the suit is brought.<sup>52</sup>

It is a general rule that public officers can not proceed in their individual capacity on a negotiable instrument made payable to them in their representative capacity.<sup>53</sup>

**§ 227ll. Holder of instrument for collection.** The holder of a negotiable instrument, transferred for collection, may sue on the same in his own name;<sup>54</sup> one who is the holder of a negotiable instrument under a restrictive indorsement "for collection," or "without recourse and without warranty of any character," or as the pledgee of a note held as collateral, in each instance is

<sup>46</sup> Rice v. Rice, 106 Ala. 636, 17 So. 628; Collier v. Barnes, 64 Ga. 484; Wheelock v. Wheelock, 5 Vt. 433.

<sup>47</sup> Friedline v. Carthage College, 23 Ill. App. 494; Morristown Look-out Bank v. Aull, 93 Tenn. 645, 27 S. W. 1014, 42 Am. St. Rep. 934.

<sup>48</sup> Young v. Murray, 3 Ga. App. 204, 59 S. E. 717.

<sup>49</sup> Pratt v. Topeka, 12 Kan. 570.

<sup>50</sup> Dugan v. U. S., 3 Wheat. 170,

4 L. Ed. 362; Rogers v. Gibson, 15 Ind. 218.

<sup>51</sup> Southern Life Ins. etc. Co. v. Gray, 3 Fla. 262.

<sup>52</sup> Tainter v. Winter, 33 Me. 348.

<sup>53</sup> State v. Torinus, 26 Minn. 1, 49 N. W. 259, 37 A. R. 395; Oconto County v. Hall, 42 Wis. 59.

<sup>54</sup> Orr v. Lacy, 18 F. Cas. 10, 589, 4 McLean 243; Meyer v. Foster, 147 Cal. 166, 81 Pac. 40; Conference Evangelical Assn. v. Plagge, 177 Ill. 431, 53 N. E. 76.



presumed to be the owner and holder thereof and may sue on the same.<sup>55</sup> and the authority to collect is not revoked by the death of the owner.<sup>56</sup>

Under the Negotiable Instruments Law, the indorsee for collection may sue by the express provision that a restrictive indorsement confers upon the indorsee the right to bring any action that the indorser could bring.<sup>57</sup>

Some jurisdictions maintained that, before the adoption of the Negotiable Instruments Law, a holder for collection was not the real party in interest and was not entitled to sue.<sup>58</sup>

§ 227mm. Who may sue—Miscellaneous. A restrictive indorsement confers upon the indorsee the right to bring any action thereon that the indorser could bring. The Negotiable Instruments Law provides as follows:

*"A restrictive indorsement confers upon the indorsee the right \* \* \* to bring any action thereon that the indorser could bring."*<sup>59</sup>

And it has been decided that an indorsee of a negotiable instrument who takes it under a qualified indorsement as "without recourse" may sue thereon in his own name; and the holder of a negotiable instrument may maintain an action on it in his own name although it is not payable to him nor assigned or indorsed to him, unless his ownership is overcome by proof.<sup>60</sup>

Where the holder of a bill which had been indorsed in blank dies, and his executor, not wishing his own name to appear, procured another to bring action in his, the other person's name against the acceptor, but did not deliver the bill until after the suit was filed, the court said that the plaintiff was neither in actual nor constructive possession and could not maintain the action.<sup>61</sup>

When an instrument made to raise money is made payable to a certain bank which never had any interest in it, and is then discounted by another party, the latter may proceed upon it as payable to him by the name of the bank.<sup>62</sup>

A person for whom a note is intended may sue on it even though there is a mistake in the name, as well as when the name is merely fictitious and intended to be such.<sup>63</sup>

<sup>55</sup> Mersick v. Alderman, 77 Conn. 634, 60 Atl. 109.

<sup>56</sup> Moore v. Hall, 48 Mich. 143, 11 N. W. 844.

<sup>57</sup> Smith v. Bayer, 46 Ore. 143, 79 Pac. 497, 114 A. S. R. 858.

<sup>58</sup> Rich v. Starbuck, 51 Ind. 87; Andrews v. McDaniel, 68 N. C. 385.

<sup>59</sup> Neg. Inst. Law, § 37, sub. 2.

<sup>60</sup> Callahan v. Louisville Dry Goods Co., 140 Ky. 712, 131 S. W. 995.

<sup>61</sup> Emmett v. Tottenbam, 8 Exch. 884.

<sup>62</sup> Elliott v. Abbot, 12 N. H. 549.

<sup>63</sup> Porter v. Kapielani, 18 Hawaii 299.

When a negotiable instrument is specially indorsed to another, he can not strike out his name and insert that of another, and thus give the latter a right to maintain a suit,<sup>64</sup> for if an instrument be indorsed specially to a particular person without further transfer, no one but such person or his representative can sue on the same; but one who is the holder of an instrument under an indorsement in blank may fill it in his own name before bringing suit, or at the trial or after the trial under certain conditions;<sup>65</sup> and a holder may always strike out a special indorsement when there are blank indorsements preceding it and bring suit under any indorsement in blank.<sup>66</sup>

As a general rule a prior party on a negotiable instrument cannot proceed against a subsequent party. However, in case a plaintiff had originally indorsed an instrument to a defendant without recourse or without consideration, and the latter had indorsed back to him for value, the plaintiff may maintain his action and it would not be objectionable on the ground of circuity of action.<sup>67</sup>

When an anomalous indorser under Section 64 of the Negotiable Instruments Law pays an instrument, he has an action against the maker, but such action is not on the note as it has been paid and extinguished.<sup>68</sup>

An action at law can not be maintained upon a negotiable instrument made by several persons and payable to one of their number, but if indorsed to a third party he may maintain an action upon it.<sup>69</sup>

The holder of the legal title to a negotiable instrument may sue alone on an instrument in which there are other persons interested with him.

A proceeding on a negotiable instrument transferred pending suit thereon can not be maintained even though it was agreed at time of transfer that action should be continued in the name of the plaintiff and though the note being indorsed in blank was transferred by delivery only;<sup>70</sup> if the plaintiff for a valuable consideration paid him by a third person and while suit is still pending agrees to transfer on demand, the note and any judgment thereon, but no demand is made before judgment, the plaintiff

<sup>64</sup> Grimes v. Piersol, 25 Ind. 246.

<sup>65</sup> Whittier v. Hayden, 9 Allen 408.

<sup>66</sup> Wetherell v. Ela, 42 N. H. 295.

<sup>67</sup> Bishop v. Hayward, 4 T. R. 470.

<sup>68</sup> Quimby v. Varnum, 190 Mass. 211, 76 N. E. 671.

<sup>69</sup> Pitcher v. Barrows, 17 Pick. (Mass.) 361, 28 Am. Dec. 306.

<sup>70</sup> Curtis v. Sprague, 51 Cal. 239; Rosemond v. Graham, 54 Minn. 323, 56 N. W. 38, 40 Am. St. Rep. 336.

<sup>71</sup> Curtis v. Bernis, 26 Conn. 1, 68 Am. Dec. 377; Cooper v. Poston, 1 Duv. (Ky.) 92, 85 Am. Dec. 610.

-till retains the legal title and may maintain the suit in his own name;<sup>72</sup> so when the point is raised the plaintiff must show that he had title when suit was commenced, as an action can not be maintained by a title acquired after suit.<sup>73</sup>

It is a general rule under statutes that an assignee of non-negotiable instruments may sue in his own name.<sup>74</sup>

In partnership cases all the partners must join in the suit when the bill or note is made payable to or indorsed specially to a firm. If one party conducts business under the name of a firm, he cannot recover on an instrument indorsed to the firm unless he shows that he alone composed the nominal firm. If negotiable paper be indorsed in blank to a firm, either partner may fill it up in his own name and sue even though one of the partners be dead. While a partner cannot sue a firm of which he is a member, upon a negotiable instrument payable by it to himself, a firm may indorse to one member who may sue upon the instrument.

§ 227nn. **Parties to actions—Defendants.** In equity and under the statutes, all persons who have or claim an interest in the subject matter of the action or who are necessary parties to a complete determination of the proceedings are proper parties.<sup>75</sup>

It is a general rule by statute that makers and indorsers may be joined as defendants,<sup>76</sup> and under Section 57 of the Negotiable Instruments Law it has been held that the holder in due course has an election to sue any one or all the makers and indorsers thereon.<sup>77</sup> The better rule is that sureties may be joined but not a guarantor for, independently of statutes, the maker and guarantor should not be joined, as the contract of guaranty is not a primary obligation to pay but is an undertaking that the debtor shall pay. The guarantor is not a promisor with the maker as is the case with the surety.<sup>78</sup>

<sup>72</sup> *Camp v. First National Bank of Ocala*, 44 Fla. 497, 33 So. 241, 103 A. S. R. 173.

<sup>73</sup> *Burch v. Daniel*, 109 Ga. 256, 34 S. E. 310.

<sup>74</sup> *Smyth v. Strader*, 4 How. 404, 11 L. Ed. 1031; *Mussetman v. MacElhenny*, 23 Ind. 4, 85 Am. Dec. 445; *Lowrey v. Danforth*, 95 Mo. App. 441, 69 S. W. 39; *Thorn v. Myers*, 36 S. C. L. 210.

<sup>75</sup> *Sullivan v. Sullivan Mfg. Co.*, 14 S. C. 494.

<sup>76</sup> *Burdette v. Bartlett*, 95 U. S. 637, 25 L. Ed. 534; *Hamil v. Ward*, 14 Colo. 277, 23 P. 330; *Hoffecker v. Moon*, 21 D. C. 263.

<sup>77</sup> *Bank of California v. Union Packing Co.*, 60 Wash. 456, 111 Pac. 573. See *contra*, *Hough v. State Bank of New Smyrna*, 61 Fla. 290, 55 S. 462.

<sup>78</sup> *Mowery v. Mast*, 9 Neb. 445, 4 N. W. 69.

Joint indorsers may be sued jointly. The Negotiable Instruments Law provides that joint indorsers who indorse are deemed to do so jointly and severally, and, consequently, they may be sued jointly, or one of them may be sued alone.<sup>79</sup>

The general rule is that on a joint and several note a suit may be had against any one of such makers severally or against them all jointly;<sup>80</sup> and while as a general rule all the joint makers are necessary parties, yet where a joint maker is a non-resident and has no property in the state, or is without jurisdiction of the court, he is not a necessary party defendant.<sup>81</sup>

It is a general rule by statute that the personal representative of a deceased joint party may be sued jointly with the survivors.<sup>82</sup>

In some jurisdictions a defendant when sued on a negotiable instrument which he has paid or which has been assigned after maturity, may give notice to the assignor to defend in a suit by the holder where a privity exists between the plaintiff and the person to whom notice is given.<sup>83</sup>

A maker may be sued in a fictitious name used by him or by his real name. And when the wrong name of payee is used, such payee is not a necessary party upon a proceeding by the real owner.<sup>84</sup>

By statute in some jurisdictions, the holder of a negotiable promissory note may maintain separate actions and recover separate judgments, against each party liable thereon. The recovery of a judgment by such holder, against an indorser on such instrument, is no bar to a subsequent action thereon against the maker.<sup>85</sup> Such statutes usually provide that persons severally and immediately liable upon the same instrument may, all or any of them, be included in the same action, at the option of the plaintiff. Often in such jurisdictions the statutes further provide that the holder may institute one suit against the whole or any number of the parties liable to such holder, but shall not, at the same term of court, institute more than one suit on such instrument, provided, however, that no judgment shall be rendered in such suit against any maker of a promissory note,

<sup>79</sup> *Hodgens v. Jennings*, 148 App. Div. 879, 133 N. Y. S. 584.

<sup>80</sup> *Chase v. Evoy*, 58 Cal. 348; *Stevens v. Caten*, 152 Ill. 56, 37 N. E. 1,023.

<sup>81</sup> *Dennett v. Chick*, 2 Me. 191, 11 Am. Dec. 59.

<sup>82</sup> *Bostwick v. McEvoy*, 62 Cal. 496; *Davis v. Wildinsson*, 2 N. C.

334; *Goodwin v. Burton*, 57 Fed. Civ. App. 586, 118 S. W. 587.

<sup>83</sup> *Pruitt v. Jones*, 14 Fed. Civ. App. 84, 36 S. W. 502.

<sup>84</sup> *Vigan v. Mandel*, 167 Ind. 586, 79 N. E. 899, 119 A. S. R. 515; *Tuggle v. Cave Spring Bank*, 8 Ga. App. 291, 68 S. E. 1070.

<sup>85</sup> *Morrison et al. v. Fishel*, 64 Ind. 177.

drawer, or acceptor of a bill, unless suit is brought in the county where one or more of such makers, drawers, or acceptors reside at the time such suit is begun.

Many jurisdictions have enacted statutes permitting actions and judgments given jointly against all the parties to a negotiable instrument, whether makers, drawers, indorsers, or acceptors, or against any one, or any intermediate number of them.<sup>86</sup>

An action to enforce a joint instrument must be brought against all the joint parties.<sup>87</sup>

<sup>86</sup> *Lowell v. Bickford*, 201 Mass. 543, 88 N. E. 1; *Hoffecker v. Moon*, 21 D. C. 263; *Young v. Warner*, 6 App. D. C. 433.

<sup>87</sup> *Sharpe v. Baker*, — Ind. App. —, 99 N. E. 44.

## PART II.

### PLEADINGS, EVIDENCE AND TRIAL PROCEDURE AS TO BILLS, NOTES AND CHECKS.

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#### CHAPTER XXII.

##### PLEADINGS—IN GENERAL.

§ 228. Meaning of term.

§ 230. The complaint or declaration.

229. Classes and order of pleadings.

231. Pleadings after complaint or declaration.

§ 228. **Meaning of term.** The mutual formal allegations of the parties in court, in affirmance or denial of the cause of action, are called the pleadings.<sup>1</sup> Thus, if a party desires to collect a note, bill or check by suit, his attorney prepares for him a statement of his case in writing. The attorney of the party proceeded against prepares a statement of the defense relied on. These two statements would constitute the pleadings in the case. Their object is to apprise the court of the exact point or points concerning which its judgment is desired. In order to secure this object numerous technical rules have been from time to time adopted, tending to certainty, clearness and brevity, in the statement of the real material issue.

§ 229. **Classes and order of pleadings.** The questions, presented to the court in an action on a bill, note or check, or, in fact, in any action at law, may be grouped in three classes: (1) Has the court to which the process has been returned authority to hear and determine the points in controversy? (2) Has the action itself been properly instituted? (3) Upon the merits of the controversy which of the parties is entitled to a judgment, and for what amount shall such judgment be rendered? Pleadings on a bill, note or check may, therefore, be grouped into three corresponding classes: (1) Pleadings which raise the question, whether the court has the requisite authority, called *pleadings to the jurisdiction*. (2) Pleadings which raise the question, whether the action has been properly instituted, called *pleadings*

<sup>1</sup> Bowman v. McLaughlin, 45 States, 151 U. S. 164, 38 L. Ed. 112; Miss. 461, 489; Tucker v. United Desmoyer v. Hereux, 1 Minn. 17.

*in abatement.* (3) Pleadings which raise the question whether, on the merits of the controversy, the plaintiff or defendant should have judgment, and which embrace all other pleadings than those previously named. These three classes of questions must be raised, when raised at all, in the foregoing order.

**§ 230. The complaint or declaration.** The plaintiff begins his suit on the bill, note or check by filing in the proper court a statement in writing showing the facts upon which he bases his claim for redress. This is called a declaration, complaint, petition or bill.

The first in order then of those pleadings, which raise the question whether on the merits of the controversy the plaintiff or defendant should have judgment, is the complaint, declaration, petition or bill. As above stated, this is the plaintiff's statement of his cause of action. It must contain, in legal form and with all the necessary technical averments, a clear and concise description of the facts of which he complains, of the damage which he has sustained, and of the remedy for which he seeks.<sup>3</sup>

The caption specifies the state, county, court and term, the name of the parties and of the action. Then follows a full and formal description of the cause of action, which forms the main body of the complaint or declaration, and, of course, varies according to the circumstances of each case. The conclusion states the damages as laid in the *præcipe* and writ. The declaration thus framed is signed by the plaintiff's attorney, and filed in the clerk's office. The time within which pleadings must be filed is regulated by certain *rules* which the courts are authorized to establish; and which become the law of the court establishing them.

**§ 231. Pleadings after complaint or declaration.** To the complaint or declaration on the note, bill or check the defendant may demur, denying that the facts alleged concerning the bill, note or check constitute a cause of action; or he may plead in bar,<sup>3</sup> either by traverse,<sup>4</sup> or by confession and avoidance.<sup>5</sup> Upon

<sup>3</sup> As to form and essentials of complaint, see, *Beggs v. Arnotte*, 80 Ala. 179; *Hardee v. Lovette*, 83 Ga. 203, 9 S. E. 680; *Baldwin v. Humphrey*, 75 Ind. 153; *Adams v. Kerns*, 11 Ind. 346; *Parry v. Henderson*, 6 Blackf. 72. As to amendments to pleadings, see note 51 Am. St. Rep. 426.

<sup>3</sup> *Norton v. Winter*, 1 Oreg. 47, 48, 62 Am. Dec. 297.

<sup>4</sup> *Dickinson v. Gray* (Ky.), 9 S. W. 281, 282. As to sufficiency of answers denying ownership of plaintiff, see note 66 L. R. A. 513; and as to right to plead inconsistent defenses, see note 48 L. R. A. 194.

<sup>5</sup> *Staten v. Hammer*, 121 Ia. 499, 96 N. W. 964; *Le Lissa v. Fuller Coal etc. Co.*, 59 Kan. 319, 52 Pac. 886.

a traverse or demurrer, issue is immediately joined; but to a confession and avoidance the plaintiff may reply by traverse, or demurrer, or a new confession and avoidance, until, by final traverse or demurrer issue is at last attained.



## CHAPTER XXIII.

### FORMS OF COMMON LAW PLEADING.

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|---|--|
| <p>§ 232. Forms of common law pleading—In general.</p> <p>DECLARATIONS—NOTE, BILL AND CHECK.</p> <p>233. Payee against maker.</p> <p>234. Indorsee against maker.</p> <p>235. Indorsee against payee or other indorsers.</p> <p>236. Declarations—Bills of exchange—Drawer against acceptor.</p> <p>237. Payee against drawer for non-acceptance.</p> | <p>§ 238. Indorsee against indorser for non-acceptance.</p> <p>ANSWERS—NOTE, BILL AND CHECK.</p> <p>239. Plea.</p> <p>240. Plea and affidavit of merits.</p> <p>241. Affidavit denying execution of instrument.</p> <p>242. Plea of payment by services.</p> <p>243. Averment of set-off.</p> <p>244. Statute of limitations.</p> <p>245. Averment of arbitration and award.</p> |
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§ 232. Forms of common law pleading—In general. The following are the most usual common law forms of declarations and answers on promissory notes, bill of exchange and bank checks. Should any other forms be desired they can be formulated by reference to those forms herein set out.

§ 233. Declaration on promissory note by payee against maker.

*In the-----Court of-----County.*  
*To the-----Term, A. D. 19-----*

A. B.

vs.

C. D.

A. B., plaintiff, by his attorney, complains of C. D., the defendant, in a plea of trespass on the case upon promises:

For that, whereas, the defendant on-----  
at-----, made his promissory note in writing, delivered the same to the plaintiff and thereby then and there promised to pay to the plaintiff, or order, ----- dollars, ----- months after date thereof; (recite according to the terms of the note), which period hath now elapsed. And being so indebted the defendant in consideration thereof then and there promised the plaintiff to pay him the said sum of money, at his request.

Yet the defendant, though requested, has not paid the same, nor any part thereof, to the plaintiff, but neglects and refuses so to do.

To the damage of the plaintiff of-----dollars, and therefore he brings suit.

DONALD S. MORRIS,  
*Attorney for Plaintiff.*

(Attach in some jurisdictions a copy of the instrument sued on.)

**§ 234. Indorsee against maker.** (Caption and commencement same as § 233.)

For that, whereas, the defendant, heretofore, to-wit, on-----at-----, made his promissory note in writing and thereby promised to pay to one E-----F-----or order,-----dollars in-----months after date, which period has now elapsed; and the said E-----F----- then and there indorsed the said note to the plaintiff, whereof the defendant then and there had notice, and by reason and by force of the statute in such case made and provided, the said defendant became liable to pay the said plaintiff the said sum of money in said note specified, according to the tenor and effect of the said note and of the said endorsement so thereon made. And being so indebted, the defendant, in consideration thereof, then and there promised the plaintiff to pay him the said sum of money, at his request.

Yet the defendant, though requested, has not paid the same, nor any part thereof, to this plaintiff, but neglects and refuses so to do.

To the damage of the plaintiff of-----dollars, and therefore he brings suit.

DONALD S. MORRIS,  
*Attorney for Plaintiff.*

(Attach in some jurisdictions copy of instrument and indorsement.)

**§ 235. Indorsee against payee or other indorsers.** (Caption and commencement same as § 233.)

For that, whereas, heretofore, to-wit, on-----at-----, one E-----F----- made his promissory note in writing and thereby promised to pay to the defendant, C. D., or order-----dollars-----months after the date thereof, which period has now elapsed. And the defendant, C. D., then and there indorsed the said note to the said plaintiff; and the said E-----F----- did not pay the amount of said note, although the same was duly presented to him, of all which the defendant then and there had notice. And being so indebted, the defendant, in consideration thereof,

then and there promised the plaintiff to pay him the said sum of money, at his request.

Yet the defendant, though requested, has not paid the same, nor any part thereof, to the plaintiff, but neglects and refuses so to do.

To the damage of the plaintiff of-----dollars, and therefore he brings suit.

DONALD S. MORRIS,

*Attorney for Plaintiff.*

(Attach in some jurisdictions copy of instrument and indorsements.)

**§ 236. Declaration on bill of exchange by drawer against acceptor.** (Caption and commencement same as § 233.)

For that, whereas, the plaintiff, on-----at-----made his bill of exchange in writing and directed the same to the defendant and thereby required the defendant to pay him, the plaintiff, -----dollars -----months after date (or after sight) thereof, which period has now elapsed; and the defendant then and there accepted the said bill and promised the plaintiff to pay the same according to the tenor and effect thereof and of the acceptance thereof.

Yet the defendant, though requested, has not paid the same, nor any part thereof, to the plaintiff, but neglects and refuses so to do.

To the damage of the plaintiff of-----dollars, and therefore he brings suit.

DONALD S. MORRIS,

*Attorney for Plaintiff.*

(Attach in some jurisdictions copy of instrument.)

**§ 237. Payee against drawer for non-acceptance.** (Caption and commencement same as § 233.)

For that, whereas, the defendant, heretofore, to-wit, on-----at-----made his bill of exchange in writing and directed the same to one E---- F---- and thereby required the said E---- F---- to pay to the plaintiff, or order, -----dollars, -----months after date thereof, which period has now elapsed; and then and there delivered the said bill to the plaintiff; and the same was then and there presented to the said E---- F---- for acceptance, and said E---- F---- then and there refused to accept the same; of all which the defendant had due notice.

Yet the defendant, though requested, has not paid the same, nor any part thereof, to the plaintiff, but neglects and refuses so to do.

To the damage of the plaintiff of-----dollars, and therefore he brings suit.

DONALD S. MORRIS,  
*Attorney for Plaintiff.*

(Attach in some jurisdictions copy of instrument.)

**§ 238. Indorsee against indorser for non-acceptance.** (Caption and commencement same as § 233.)

For that, whereas, one E---- F----, heretofore, to-wit, on -----at-----, made his bill of exchange in writing and directed the same to one G---- H---- and thereby required the said G---- H---- to pay to the said E---- F----, or order-----dollars-----months after date thereof, which period has now elapsed; and the said E---- F---- then and there indorsed the said bill to the defendant, who then and there indorsed and delivered the same to the plaintiff, when the same was then and there presented to the said G---- H---- for acceptance, and the said G---- H---- then and there refused to accept the same; of all of which the defendant then and there had due notice.

Yet the defendant, though requested, has not paid the same, nor any part thereof, to the plaintiff, but neglects and refuses so to do.

To the damage of the plaintiff of-----dollars, and therefore he brings suit.

DONALD S. MORRIS,  
*Attorney for Plaintiff.*

(Attach in some jurisdictions copy of instrument.)

**§ 239. Plea—Answers—Note, Bill and Check.**

*In the-----Court of-----County.*

*To the-----Term, A. D. 19*

State of-- }  
County of } ss.

A. B.

vs.

C. D.

The defendant, by J---- S----, his attorney, comes and defends and says that he did not promise as in the plaintiff's declaration alleged.

And of this he puts himself upon the country.

By J---- S----,  
*Attorney for Defendant.*

**§ 240. Plea and affidavit of merits.** (Same caption as § 239.)

The defendant, by J----- S-----, his attorney, comes and defends and says that he did not promise as in the plaintiff's declaration alleged.

And of this he puts himself upon the country.

By J----- S-----,

*Attorney for Defendant.*

*In the-----Court of-----County.*

State of-- }  
County of-- } ss.

A. B.

vs.

C. D.

C----- D-----, being duly sworn, says that he is the defendant named in the above entitled suit, and that he verily believes he has a good defense to said suit upon the merits to the whole of the plaintiff's demand.

C----- D-----

Subscribed and sworn to before me, this-----  
day of -----, A. D., 19-----

-----  
(Official character.)

**§ 241. Affidavit denying execution of instrument.** (Same caption as § 239.)

C----- D----- on oath deposes and says that he is the defendant in the above entitled cause and that he did not make and deliver the instrument in writing in the said declaration mentioned, in manner and form as the plaintiff as above in that behalf alleged.

And further affiant sayeth not.

C----- D-----

Subscribed and sworn to before me, this-----  
day of -----, A. D., 19-----

-----  
(Official character.)

**§ 242. Plea of payment by services.** (Same caption as § 239.)

The defendant, by J----- S-----, his attorney, comes and defends and says,

That, after the said promissory note became payable, and before this action was commenced, to-wit, on-----, the plaintiff agreed to receive and the defendant agreed to ren-

der to the said plaintiff his services as-----  
to the amount of said note, and that the defendant afterwards,  
according to said agreement, rendered such services to the plain-  
tiff to the full amount due and payable on said note.

And of this he puts himself upon the country.

By J----- S-----,  
*Attorney for Defendant.*

**§ 243. Averment of set-off.** (Same caption as § 239.)

The defendant, by J----- S-----, his attorney, comes and de-  
fends and says that at the commencement of this suit, to-wit, on  
the-----day of-----, A. D. 1922--  
he, the plaintiff, was, and still is, indebted to the defendant in  
the sum of-----dollars.

And of this he puts himself upon the country.

By J----- S-----,  
*Attorney for Defendant.*

**§ 244. Statute of limitations.** (Same caption as § 239.)

The defendant, by J----- S-----, his attorney, comes and de-  
fends and says,

That the supposed cause of action in the declaration mentioned  
was for articles charged in a store account, and that the same did  
not accrue to the plaintiff at any time within-----  
years next before the commencement of this suit.

And of this he puts himself upon the country.

By J----- S-----,  
*Attorney for Defendant.*

**§ 245. Averment of arbitration and award.** (Same caption  
as § 239.)

The defendant, by J----- S-----, his attorney, comes and de-  
fends and says,

That on-----the plaintiff and defendant  
mutually submitted the demand set forth in the plaintiff's dec-  
laration to the arbitration of-----and-----  
-----, which submission was never revoked; and that on  
-----at-----, the said-----  
-----and-----made and pub-  
lished their award by which they declared the plaintiff entitled  
to One Hundred (\$100.00) Dollars, which has been paid him.

And of this he puts himself upon the country.

By J----- S-----,  
*Attorney for Defendant.*

## CHAPTER XXIV.

### FORMS OF CODE PLEADING.

#### § 246. Forms of code pleading—In general.

##### COMPLAINTS—PROMISSORY NOTE.

- 247. Complaint on promissory note by payee against maker.
- 248. Same—For interest due.
- 249. Same—Note providing for attorney's fee.
- 250. Same—Whole amount due on failure to pay part.
- 251. Same—Payable after sight, demand or notice.
- 252. Same—Excuse for not setting out copy of note.
- 253. Same—Lost note.
- 254. Complaint on promissory note by executor of payee against maker.
- 255. Complaint on promissory note — Indorsee against maker.
- 256. Same—Assignee by delivery against maker and assignor.
- 257. Same — Indorsee against maker and indorsers.
- 258. Same—Indorsee against indorser—Payable in another state—Negotiable by foreign statute.

##### COMPLAINTS—BILLS OF EXCHANGE.

- 259. Complaint on bill of exchange — Payee against drawer on non-acceptance.
- 260. Same—Payee against acceptor on non-payment.
- 261. Same—Drawer against acceptor on non-payment.
- 262. Same — Indorsee against drawer on non-acceptance.
- 263. Same—Indorsee against acceptor on non-payment.
- 264. Same—Indorsee against acceptor—Payable at particular place.

#### § 265. Same — Indorsee against drawer, indorsers and acceptor on inland bill of exchange.

- 266. Same — Indorsee against drawer when payable at a certain place.
- 267. Same — Indorsee against drawer — No funds in drawer's hands—Failure to notify drawer.
- 268. Same — Indorsee against drawer—Excuse for non-presentment—No effects.
- 269. Same — Indorsee against drawer—Demand and notice waived.
- 270. Same—Indorsee against indorser — Non-payment by acceptor.

##### COMPLAINTS—BANK CHECK.

- 271. Complaint on bank check—Payee against drawer.
- 272. Same—Payee against drawee.
- 273. Same — Drawer against drawee.
- 274. Same—Indorsee against indorser.

##### ANSWERS—NOTE, BILL AND CHECK.

- 275. Answer to complaint on promissory note, bill of exchange or check—General denial.
- 276. Same—Denial of execution of instrument.
- 277. Same—Want of consideration.
- 278. Same—Partial want of consideration.
- 279. Same—Without consideration as to indorsee.
- 280. Same—Illegal consideration.
- 281. Same—Failure of consideration.
- 282. Same—False representations.

283. Same—Payment.  
284. Same—Alteration.

285. Same—That acceptance was  
for accommodation.

§ 246. **Forms of code pleading—In general.** The following are the most common code forms of complaints and answers on promissory notes, bills of exchange and bank checks. Should any other forms be desired they can be formulated by reference to those forms herein set out:

§ 247. **Complaint on promissory note by payee against maker.**

CAPTION AND COMMENCEMENT.

State of-----, }  
-----County. } ss.

*In the Superior Court.  
January Term, 19---*

J. S. }  
vs. }  
M. S. }

*Complaint.*

The plaintiff complains of the defendant, and alleges:  
That the defendant, by his note, a copy of which is  
filed herewith, and made a part of this complaint, promised  
to pay the plaintiff Two Hundred Dollars.

That said note is now due and unpaid.

Wherefore, the plaintiff demands judgment for Two  
Hundred Dollars.

DONALD S. MORRIS,

*Attorney for Plaintiff.*

SIGNATURE.

COPY OF NOTE.

Indianapolis, Indiana.

December 30, 19---

One day after date, I promise to pay to J.----- S.-----  
or order Two Hundred Dollars.

Value received.

M.----- S.-----



**§ 248. Complaint on promissory note by payee against maker—For interest due.**

(Caption and commencement same as § 247.)

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the defendant, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay the plaintiff \_\_\_\_\_ dollars, \_\_\_\_\_ years after date, with \_\_\_\_\_ per cent per annum interest, payable annually.

That the first annual installment of said interest is now due and unpaid.

Wherefore, plaintiff demands judgment for \_\_\_\_\_ dollars.

(Copy of note.)

(Signature same as in § 247.)

**§ 249. Same—Note providing for attorney's fee.**

(Caption and commencement same as § 247.)

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, defendant, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay the plaintiff, \_\_\_\_\_ months after date, the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ per cent attorney's fee (or a reasonable attorney's fee), for collecting the same. (That a reasonable fee for plaintiff's attorney in this action is \_\_\_\_\_ dollars.)

That said note is now due and unpaid.

Wherefore, etc.

(Copy of note.)

(Signature same as in § 247.)

**§ 250. Same—Whole amount due on failure to pay part.**

(Caption and commencement same as § 247.)

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the defendant, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay the plaintiff \_\_\_\_\_ dollars, \_\_\_\_\_ years after date, with \_\_\_\_\_ per cent per annum interest, payable annually, the whole sum of principal and interest to become due and payable upon failure to pay any of said installments of interest, or parts thereof.

That the defendant has failed to pay the second installment of said interest, which fell due on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

That said note is now due and unpaid.

Wherefore, etc.

(Copy of note.)

(Signature same as in § 247.)

**§ 251. Same—Payable after sight, demand or notice.**

(Caption and commencement same as § 247.)

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the defendant, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay the plaintiff \_\_\_\_\_ dollars, \_\_\_\_\_ days after sight (or, \_\_\_\_\_ days after demand), (or \_\_\_\_\_ days after notice).

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, said note was duly presented to defendant, with notice that payment would be required according to its terms.

That said note is now due and unpaid.

Wherefore, etc.

(Copy of note.)

(Signature same as in § 247.)

**§ 252. Same—Excuse for not setting out copy of note.**

(Caption and commencement same as § 247.)

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the defendant, by his promissory note, promised to pay the plaintiff, six months after date \_\_\_\_\_ dollars, with \_\_\_\_\_ per cent per annum interest from date until paid, waiving valuation and appraisal laws.

That plaintiff is unable to set out a copy of said note, or give a fuller description thereof, for the reason that the same is wrongfully in the possession of the defendant, who refuses to deliver it to the plaintiff, although requested so to do (or, is in the hands of A. B., who refuses to surrender the same to the plaintiff, or give him a copy thereof), (or, has been destroyed without the fault of plaintiff).

That said note is now due and unpaid.

Wherefore, plaintiff demands judgment for \_\_\_\_\_ dollars.

(Signature same as in § 247.)

**§ 253. Same—Lost note.**

(Caption and commencement same as § 247.)

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the defendant, by his promissory note, promised to pay the plaintiff, six months after date, \_\_\_\_\_ dollars, with \_\_\_\_\_ per cent per annum interest from date until paid, waiving valuation and appraisal laws.

That he is unable to set out a copy of said note or to file an exhibit of the same herewith, for the reason that said note is lost and the plaintiff is unable to find the same and does not now know where it is; that said note was lost after the maturity thereof; that the plaintiff never assigned, indorsed, or otherwise trans-

ferred said note, but always has been, and still is the owner thereof; that said note is due and unpaid.

Wherefore, the plaintiff demands judgment for-----dollars.

(Signature same as in § 247.)

**§ 254. Complaint on promissory note by executor of payee against maker.**

(Caption.)

The plaintiff complains of the defendant, and alleges:

That on the-----day of-----, 19\_\_\_\_, defendant, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay C. D. -----dollars, on or before the-----day of-----, 19\_\_\_\_.

That on the-----day of-----, 19\_\_\_\_, in the county of-----, State of-----, C. D. died, testate, and by his last will and testament appointed the plaintiff the executor thereof.

That on the-----day of-----, 19\_\_\_\_, the plaintiff duly qualified and received his letters as such executor.

That said note is now due and unpaid.

Wherefore, etc.

(Copy of note.)

(Signature same as in § 247.)

**§ 255. Complaint on promissory note—Indorsee against maker.**

(Caption and commencement same as § 247.)

That on the-----day of-----, 19\_\_\_\_, the defendant, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay A.----- B.-----, or order, -----dollars.

That the said A.----- B.----- indorsed the same to the plaintiff.

That said note is now due and unpaid.

Wherefore, etc.

(Copy of note and indorsement.)

(Signature same as in § 247.)

**§ 256. Same—Assignee by delivery against maker and assignor.**

(Caption and commencement.)

That on the-----day of-----, 19\_\_\_\_, the defendant, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay the defendant, -----dollars.

That defendant, \_\_\_\_\_, assigned and delivered said note to the plaintiff without indorsement, and said \_\_\_\_\_ is made a defendant, to answer as to said assignment.

That said note is now due and unpaid.

Wherefore, etc.

(Copy of note.)

(Signature same as in § 247.)

**§ 257. Same—Indorsee against maker and indorsers.**

(Caption and commencement.)

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the defendant, A.\_\_\_\_ B.\_\_\_\_, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay the defendant, C.\_\_\_\_ D.\_\_\_\_, or order, \_\_\_\_\_ dollars, at the First National Bank of Indianapolis, Indiana.

That the defendant, C.\_\_\_\_ D.\_\_\_\_, indorsed said note to the defendant, E.\_\_\_\_ F.\_\_\_\_, who indorsed the same to the plaintiff, copies of which indorsements are filed herewith, and made parts of this complaint.

That the plaintiff presented said note for payment at its maturity, and payment was refused, of which all the defendants then had due notice.

That said note is now due and unpaid.

Wherefore, the plaintiff demands judgment for \_\_\_\_\_ dollars.

(Copy of note and indorsements.)

(Signature same as in § 247.)

**§ 258. Same—Indorsee against indorser—Payable in another state—Negotiable by foreign statute.**

(Caption and commencement.)

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at Buffalo, New York, A.\_\_\_\_ B.\_\_\_\_, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay C.\_\_\_\_ D.\_\_\_\_, or order, \_\_\_\_\_ dollars, \_\_\_\_\_ months after date, at the First National Bank of Buffalo, New York.

That the defendant, C.\_\_\_\_ D.\_\_\_\_, indorsed said note to the plaintiff before maturity.

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, (or at the maturity thereof), said note was duly presented at said bank, and payment demanded, which was refused, of which the defendant, on said day, had notice.

That, by an act of the legislature of the said State of New York, a copy of which is filed herewith, and made a part of this

complaint, and which was at the time said note was executed and ever since has been in force, said note was and is negotiable as an inland bill of exchange.

That said note is now due and unpaid.

Wherefore, etc.

(Copy of note and indorsement.)

(Signature same as in § 247.)

(Copy of act of legislature.)

### COMPLAINTS—BILLS OF EXCHANGE.

§ 259. Complaint on bill of exchange—Payee against drawer on non-acceptance.

(Caption same as § 247.)

The plaintiff complains of the defendant, and alleges:

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the defendant, by his bill of exchange, a copy of which is filed herewith, and made a part hereof, directed to D.\_\_\_\_ G.\_\_\_\_, requested the said D.\_\_\_\_ G.\_\_\_\_ to pay the plaintiff, or order, \_\_\_\_\_dollars, \_\_\_\_\_months after date, and the same was, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, presented to said D.\_\_\_\_ G.\_\_\_\_, and acceptance thereof demanded, which was refused. (If a foreign bill, add: and said bill of exchange was then and there protested for non-acceptance), of which defendant had due notice, but did not pay the same.

That there is now due and unpaid thereon the sum of \_\_\_\_\_dollars, for which plaintiff demands judgment.  
(Signature same as in § 247.)

COPY OF BILL OF EXCHANGE.

\$120.00

Chicago, Ill., December 1, 19\_\_\_\_.

\_\_\_\_\_Thirty days after date\_\_\_\_\_

Pay to the order of J. S.\_\_\_\_\_

\_\_\_\_\_One Hundred and Twenty\_\_\_\_\_Dollars

Value received, and charge the same to the account of

To D. G.

M. S.

Jamestown, N. Y.

§ 260. Same—Payee against acceptor on non-payment.

(Caption and commencement same as § 247.)

That on \_\_\_\_\_, at \_\_\_\_\_, E.\_\_\_\_ F.\_\_\_\_, by his bill of exchange, a copy of which is filed here-

with, and made a part hereof, requested the defendant to pay plaintiff -----dollars, ----- days after date.

That on the-----day of-----, 19\_\_\_\_, the defendant accepted the same.

That on the-----day of-----, 19\_\_\_\_, the plaintiff presented said bill to the defendant for payment, which was refused.

That the same is now due and wholly unpaid.

Wherefore, etc.

(Copy of bill.)

(Signature same as in § 247.)

**§ 261. Same—Drawer against acceptor on non-payment.**

(Caption and commencement same as § 247.)

That on the-----day of-----, 19\_\_\_\_, plaintiff, by his bill of exchange, a copy of which is filed herewith, and made a part hereof, requested the defendant to pay E.---- F.----, -----, dollars----- days after date.

That the defendant, on the-----day of-----, 19\_\_\_\_, accepted said bill.

That he did not pay the same when due, although payment was demanded at the maturity thereof.

That said bill was returned to the plaintiff, and he has been compelled to pay the same to the said E.---- F.----.

That the same is due and unpaid.

Wherefore, etc.

(Copy of bill.)

(Signature same as in § 247.)

**§ 262. Same—Indorsee against drawer on non-acceptance.**

(Caption and commencement same as § 247.)

That on-----, at-----, the defendant, by his bill of exchange, a copy of which is filed herewith, and made part of this complaint, requested G.---- H.---- to pay E.---- F.----, ----- dollars----- months after date.

That E.---- F.----, on-----, assigned the same to plaintiff by indorsement.

That plaintiff, on-----, presented said bill to G.---- H.----, who refused to accept the same, of which the defendant, at the time, had due notice.

That the same is due and unpaid.

Wherefore, etc.

(Copy of bill and indorsement.)

(Signature same as in § 247.)

**§ 263. Same—Indorsee against acceptor on non-payment.**  
(Caption and commencement same as § 247.)

That on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_,  
E. F., by his bill of exchange, a copy of which is filed herewith,  
and made a part hereof, requested the defendant to pay G. H.,  
or order, \_\_\_\_\_dollars, \_\_\_\_\_days after  
sight.

That the defendant, on the \_\_\_\_\_day of \_\_\_\_\_  
\_\_\_\_\_, 19\_\_\_\_, accepted said bill.

That the said G. H. indorsed the same to plaintiff.

That on the \_\_\_\_\_day of \_\_\_\_\_,  
19\_\_\_\_, plaintiff presented said bill to the defendant for pay-  
ment, which was refused.

That the same is now due and unpaid.

Wherefore, etc.

(Copy of bill and indorsement.) (Signature same as in § 247.)

**§ 264. Same—Indorsee against acceptor—Payable at particular place.**

(Caption and commencement same as § 247.)

That on the \_\_\_\_\_day of \_\_\_\_\_,  
19\_\_\_\_, E. F., by his bill of exchange, a copy of which is filed  
herewith, and made a part hereof, requested the defendant to  
pay E. F. \_\_\_\_\_dollars, \_\_\_\_\_  
days after date.

That the defendant, on the \_\_\_\_\_day of \_\_\_\_\_  
\_\_\_\_\_, 19\_\_\_\_, accepted the same, payable at the First  
National Bank of South Bend, California, and not elsewhere.

That the said E. F. indorsed said bill of exchange to the  
plaintiff.

That the same was, on the \_\_\_\_\_day of \_\_\_\_\_  
\_\_\_\_\_, 19\_\_\_\_, (or, on the day of its maturity), pre-  
sented for payment at the said First National Bank of South  
Bend, California, and payment refused.

That said bill was then and there protested for non-payment,  
of all which the defendant then and there had due notice.

That the same is now due and unpaid.

Wherefore, etc.

(Copy of bill.) (Signature same as in § 247.)

**§ 265. Same—Indorsee against drawer, indorsers and acceptor on inland bill of exchange.**

(Caption and commencement.)

That on the \_\_\_\_\_day of \_\_\_\_\_,  
19\_\_\_\_, the defendant, C. D., by his bill of exchange, a copy of

which is filed herewith, and made a part hereof, requested the defendant, E. F., to pay the defendant, G. H., or order, ----- dollars, ----- days after date.

That on the ----- day of -----, 19----, the said E. F. accepted the same.

That the defendant, G. H., by indorsement in writing, a copy of which is filed herewith, and made part hereof, assigned said bill of exchange to the plaintiff.

That on the day of the maturity of said bill, the same was presented to the defendant, E. F., for payment, which was refused, of all which the defendants then had notice.

That the said bill is now due and unpaid.

Wherefore, etc.

(Copy of bill and indorsement.) (Signature same as in § 247.)

**§ 266. Same—Indorsee against drawer when payable at a certain place.**

(Caption and commencement same as § 247.)

That on the ----- day of -----, 19----, the defendant, by his bill of exchange, a copy of which is filed herewith, and made a part hereof, requested E. F. to pay G. H. ----- dollars, ----- days after date, payable at Indianapolis, Indiana.

That the said G. H. indorsed the same to the plaintiff.

That on the ----- day of -----, 19----, (or on the day of its maturity), said bill was presented (at the said National Bank of Indianapolis, Indiana), and payment demanded, which was refused, of which the defendant then and there had notice.

That said bill is now due and unpaid.

Wherefore, etc.

(Copy of bill and indorsement.) (Signature same as in § 247.)

**§ 267. Same—Indorsee against drawer—No funds in drawee's hands—Failure to notify drawer.**

(Caption and commencement same as § 247.)

That the defendant, on the ----- day of -----, 19----, by his bill of exchange, of which a copy is herewith filed, and made a part hereof, requested E. F. to pay the defendant, or order, ----- dollars, ----- days after date.

That defendant indorsed said bill to the plaintiff.

That the same was, on the ----- day of -----, 19----, presented to said E. F. for acceptance, which was refused,



That at the time when said bill was drawn, and from thence until payment thereof was refused, the defendant had no moneys or effects in the hands of the said E. F., nor did he expect to have, or that said bill would be accepted or paid on presentment.

That defendant has sustained no damage by a failure to give notice of the refusal to accept or pay said bill.

That the same is now due and unpaid.

Wherefore, etc.

(Copy of bill and indorsement.) (Signature same as in § 247.)

**§ 268. Same—Indorsee against drawer—Excuse for non-presentment—No effects.**

(Caption and commencement same as § 247.)

That the defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by his bill of exchange, of which a copy is herewith filed and made a part hereof, requested E. F. to pay the defendant, or order, \_\_\_\_\_ dollars, \_\_\_\_\_ days after date.

The defendant indorsed said bill to the plaintiff.

That said bill was not presented for acceptance or payment, for the reason that the defendant had no effects in the hands of said E. F., either at the time of drawing said bill or at any time thereafter.

That said bill is now due and unpaid.

Wherefore, etc.

(Copy of bill and indorsement.) (Signature same as in § 247.)

**§ 269. Same—Indorsee against drawer—Demand and notice waived.**

(Caption and commencement same as § 247.)

That the defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by his bill of exchange, a copy of which is herewith filed and made a part hereof, requested E. F. to pay the defendant, or order, \_\_\_\_\_ dollars, \_\_\_\_\_ days after date.

That defendant indorsed said bill to the plaintiff.

That the defendant (drawee or indorser), before presentment for acceptance (or, before the bill became due), waived the presentation of the same for acceptance (or, payment), and notice of non-acceptance (or, non-payment) thereof.

That said bill is now due and unpaid.

Wherefore, etc.

(Copy of bill and indorsement), (Signature same as in § 247.)

**§ 270. Same—Indorsee against indorser—Non-payment by acceptor.**

(Caption and commencement.)

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, one G. H., by his bill of exchange, a copy of which is filed herewith, and made a part of this complaint, requested I. J. to pay C. D., or order, \_\_\_\_\_dollars, two months after date.

That the said C. D., by his indorsement thereon, a copy of which is filed herewith, and made a part hereof, assigned said bill to the plaintiff.

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the said drawee accepted said bill.

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, (or, at its maturity), the same was duly presented for payment and refused (if a foreign bill, add: and said bill was thereupon duly protested), of all which the defendant then had due notice, but did not pay the same.

That said bill is now due and unpaid.

Wherefore, plaintiff demands judgment for \_\_\_\_\_ dollars.

(Copy of bill and indorsement.) (Signature same as in § 247.)

### COMPLAINTS—BANK CHECK.

**§ 271. Complaint on bank check—Payee against drawer.**

(Caption and commencement same as § 247.)

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the defendant, by his check, a copy of which is filed herewith, and made a part of this complaint, requested the \_\_\_\_\_ Bank to pay to plaintiff, or bearer, \_\_\_\_\_ dollars, and delivered the same to plaintiff.

That plaintiff, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, presented said check to said bank, and demanded payment, which was refused, of which the defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, had notice.

That said check is now due and unpaid.

Wherefore, etc.

(Copy of check.)

(Signature same as in § 247.)

*Detroit, Mich., December 1, 19\_\_\_\_*

*THE A. B. BANK.*

*Pay to the order of J. S. \_\_\_\_\_ \$200.00*  
*Two Hundred \_\_\_\_\_ Dollars*  
*M. S.*

**§ 272. Same—Payee against drawee.**

(Caption and commencement same as § 247.)

That on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, one M. S., by his check, a copy of which is filed herewith,  
and made a part of this complaint, requested the defendant to  
pay the plaintiff the sum of \_\_\_\_\_ dollars.

That on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, plaintiff presented the same to the defendant, and de-  
manded payment thereof, which was refused.

That said check is now due and unpaid.

Wherefore, etc.

(Copy of check.)

Signature same as in § 247.)

**§ 273. Same—Drawer against drawee.**

(Caption and commencement same as § 247.)

That on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, plaintiff had on deposit in the defendant's bank \_\_\_\_\_  
\_\_\_\_\_ dollars.

That on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, he drew his check on the defendant, requesting it to  
pay C. D., or bearer, \_\_\_\_\_ dollars.

That C. D. indorsed the said check to E. F., who indorsed the  
same to G. H.

That on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, the said G. H. presented said check to the defendant  
for payment, which was refused, whereby plaintiff was com-  
pelled to pay the same, to his damage \_\_\_\_\_ dol-  
lars, for which he demands judgment.

(Signature same as in § 247.)

**§ 274. Same—Indorsee against indorser.**

(Caption and commencement same as § 247.)

That on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, A. B., by his check, a copy of which is filed herewith,  
and made a part of this complaint, requested the National Bank  
of Indianapolis, Indiana, to pay the defendant, or order, \_\_\_\_\_  
\_\_\_\_\_ dollars.

That on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, the defendant, by his indorsement thereon, a copy of  
which is filed herewith, and made a part hereof, assigned said  
check to the plaintiff.

That on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, the plaintiff presented the same to said bank for pay-  
ment, which was refused, of which the defendant then had notice.

That said check is now due and unpaid.  
(Copy of check and indorsement.)  
Wherefore, etc.

(Signature same as in § 247.)

# ANSWER—NOTE, BILL AND CHECK.

## **§ 275. Answer to complaint on promissory note, bill of exchange or check—General denial.**

(Caption and commencement same as § 247.)

The defendant, for answer to plaintiff's complaint, alleges: that he denies each and every allegation thereof.

H. NATHAN SWAIM,  
*Attorney for Defendant.*

## **§ 276. Same—Denial of execution of instrument.**

(Caption and commencement same as § 247.)

The defendant, for answer to plaintiff's complaint, alleges:  
That he did not execute the note (bill of exchange) (check)  
sued on in this action.

Wherefore, he demands judgment for costs.

(Jurat.) (Signature same as in § 275.)

## **§ 277. Same—Want of consideration.**

(Caption and commencement same as § 247.)

That the note (bill of exchange), (writing sued on) was given  
without any consideration.

Wherefore, defendant demands judgment.

(Signature same as in § 275.)

## **§ 278. Same—Partial want of consideration.**

(Caption and comment same as § 247.)

The defendant, in answer to all of the amount sued on in excess of \_\_\_\_\_dollars, alleges:

That the note sued on as to such excess was given without any  
consideration therefor.

Wherefore, etc.

(Signature same as in § 275.)

## **§ 279. Same—Without consideration as to indorsee.**

(Caption and commencement same as § 247.)

That the note sued on herein was given without any consideration, and the plaintiff took the same after it fell due (or, with knowledge that the same was given without consideration).

Wherefore, etc.

(Signature same as in § 275.)

**§ 280. Same—Illegal consideration.**

(Caption and commencement same as § 247.)

That the consideration for the note sued on was illegal, in this: (state the facts showing its illegality, e. g.) That the defendant was, at the time of executing the note, charged with the crime of ----- (state what) and had been indicted therefor in the ----- Circuit Court; and plaintiff, to induce defendant to execute said note, represented that he could suppress and prevent said prosecution; and, in consideration of plaintiff's promise to suppress said prosecution, and cause the same to be dismissed, and for no other consideration, defendant executed to him said note.

(Or, that at the time this note was given, a suit by the defendant against the plaintiff for divorce was pending in the ----- Circuit Court and the same was given in consideration of the promise that plaintiff would not appear and defend said action, and for no other consideration.)

Wherefore, defendant says that the consideration for said note was illegal and void, and he demands judgment.

(Signature same as in § 275.)

**§ 281. Same—Failure of consideration.**

(Caption and commencement same as § 247.)

That the note sued on was given in consideration of the promise of plaintiff that he would sell and deliver to defendant goods and merchandise from the store of the plaintiff, then in business at -----, as the same might, from time to time, be ordered by defendant during the year -----, not exceeding the amount of said note.

That thereafter defendant, during the year -----, ordered goods from plaintiff to the amount of said note; but plaintiff failed and refused to deliver the same, or any part of them.

(Or, if there is only a partial failure, say: For answer to all of said note in excess of ----- dollars, the defendant says that: (allege facts, as above, to\*) That on the ----- day of -----, 19--, on defendant's order, plaintiff delivered to defendant goods to the amount of ----- dollars.

That defendant thereafter, during said year, gave orders to plaintiff, at various times, for goods amounting in the aggregate to ----- dollars, the balance of the amount of said note; but plaintiff failed and refused to deliver the same, or any part of them, and defendant has received no more than said amount of ----- dollars,

And this was the only consideration for said note.

Wherefore, defendant says the consideration of said note has failed (to the extent of-----dollars), and he demands judgment.

(Signature same as in § 275.)

**§ 282. False representations.**

(Caption and commencement same as § 247.)

That the note sued on was given by defendant in consideration of the sale, by plaintiff to defendant, of a certain horse.

That to induce defendant to purchase said horse and execute said note, plaintiff falsely and fraudulently represented to defendant (set out the representations, e. g.) that said horse was sound, and quiet in harness, and was only-----years old.

That said representations were false, and known to be so by plaintiff at the time.

That said horse was not sound; but was (state how diseased), and would not work in harness, and was-----years old.

That defendant was ignorant of the fact, and believed and relied upon said representations, and was thereby induced to purchase said horse and execute the note sued on.

That on the-----day of-----, 19----, defendant first discovered that said representations were false, and he thereupon (or, on the-----day of-----, 19----,) tendered said horse to plaintiff and demanded said note; but plaintiff refused to accept the horse or deliver the note.

That said horse, if he had been as represented by plaintiff, would have been of the value of-----dollars; but he was, in fact, of the value of not exceeding-----dollars, and, for defendant's use, was wholly worthless.

Wherefore, defendant demands judgment.

(Signature same as in § 275.)

**§ 283. Same—Payment.**

(Caption and commencement same as in § 247.)

That he fully paid the note (bill of exchange) (check) sued on before the bringing of this action.

(Signature same as in § 275.)

**§ 284. Same—Alteration.**

(Caption and commencement same as § 247.)

The defendant, -----, for separate answer to plaintiff's complaint, admits that he signed a note payable to plaintiff, but alleges that he signed and executed the same, together with the defendant, -----, and thereafter,

without the knowledge or consent of this defendant, the plaintiff materially altered and changed said note, in this: (state in what the alteration consists, e. g., he procured the same to be signed by one-----) (or, raised said note from the sum of----- dollars, the amount for which it was given, to-----dollars) (or, erased therefrom the name of-----, who signed the same, as a joint maker, with this defendant) without the knowledge or consent of this defendant.

(Signature same as in § 275.)

**§ 285. Same—That acceptance was for accommodation.**

(Caption and commencement same as in § 247.)

The defendant, for answer to plaintiff's complaint, alleges:

That he accepted the bill mentioned in the complaint for the accommodation of----- (plaintiff), and that there was no consideration for the acceptance or payment of said bill by defendant.

(If the action is by an indorsee, say: That plaintiff received said bill after maturity without consideration, and with full knowledge that defendant accepted the same without consideration.)

Wherefore, defendant demands judgment for costs.

(Signature same as in § 275.)

## CHAPTER XXV.

### EVIDENCE—IN GENERAL.

§ 286. In general.

287. Presumptions in general.

288. Burden of proof in general.

§ 289. Competency of parties to negotiable instruments as witnesses.

290. Declarations and admissions.

§ 286. In general. An action on a promissory note or bill of exchange is an action upon a contract and the rules and principles of evidence applying to an action upon a contract apply generally to an action on a promissory note or a bill of exchange. The general rules apply as to presumptions, burden of proof, parol evidence<sup>1</sup> and witnesses. There are, however, some exceptions to the general rules and where these occur they will be pointed out.

§ 287. Presumptions in general. It is presumed that negotiable paper was regularly issued for a valuable consideration, and that the payee or the one who has purchased it before maturity is a *bona fide* holder and entitled to recover the full amount.<sup>2a</sup> But if the defendant can show that the note was originally obtained by duress, secured through fraud, or that it was lost or stolen, the burden is changed and the presumption then arises that the guilty person will part with the instrument for the purpose of enabling some third party to recover for his benefit.<sup>3</sup> There is also a presumption that an indorsement, made by a payee or indorsee without date, was before maturity and that the holder acquired the note or bill before maturity, and in the absence of proof the indorsement will be presumed to have been at the time of execution of the note,<sup>3</sup> and at the place where the instrument is dated; and a bill of exchange is presumed to have been accepted before maturity and within a reasonable time after its date. The holder of a note payable to bearer is presumed to be the owner. The drawee of a check is presumed to know the

<sup>1</sup> As to parol evidence to vary contract of party to negotiable paper, see note 8 U. S. L. Ed. 316.

<sup>2a</sup> *Swift v. Smith*, 102 U. S. 442, 26 L. Ed. 193; *Wayland University v. Boorman*, 56 Wis. 657, 14 N.

W. 819; *Beer v. Clifton*, 111 Cal. 51, 43 Pac. 411.

<sup>3</sup> *Pritchett v. Sheridan*, 29 Ind. App. 81, 63 N. E. 865.

<sup>3</sup> *Collins v. Gilbert*, 94 U. S. 753, 24 L. Ed. 170; *Bradford v. Prescott*, 85 Me. 482, 27 Atl. 461.



signature of the drawers.<sup>4</sup> When a party draws a check on a bank which is paid, it is not presumed to have been made for the payment of a debt to the bank but that it was drawn against funds of the drawer. Payment of a note is presumed from its possession by the maker.<sup>5</sup> The execution and delivery of a note raises the presumption of a settlement of accounts previous to its date. Where several persons sign a note they are presumed to be equally liable.

The instrument, when its execution is not denied, is *prima facie* evidence of the debt. If the plaintiff produces the paper, proves the signature and indorsements, he may usually recover, unless the defendant is able to overthrow the presumptions by satisfactory proof.

These presumptions are merely *prima facie* and are not absolute or conclusive and must be received with caution, sometimes being entitled to considerable weight and sometimes to very little; generally their chief importance is to determine the burden or order of proof.

§ 288. **Burden of proof in general.** There are five material allegations which as a general rule the plaintiff must prove in order to win his case unless the same are admitted. These are, first, the existence of the instrument, as described in the declaration or complaint; second, that the defendant was a party to it; third, the nature of the defendant's contract; fourth, the plaintiff's interest in and right of action upon the instrument; fifth, the breach of the contract by the defendant.<sup>6a</sup>

§ 289. **Competency of parties to negotiable instruments as witnesses.** In some jurisdictions the testimony of parties to negotiable instruments in actions upon them between other parties is as a general rule admissible or not, like the testimony of any other witnesses, depending upon whether such witnesses are interested or are not interested in the event of the suit.

Thus in an action against one of several makers of a note, another maker of the same note is a competent witness for the plaintiff as he stands indifferent.<sup>6</sup> The maker may testify for the plaintiff, in an action by the indorsee against the indorser.<sup>7</sup> If

<sup>4</sup> *White v. Continental Nat'l Bank*, 64 N. Y. 316, 21 Am. R. 612; *United States Bank v. Bank of Georgia*, 10 Wheat. (U. S.) 333, 6 L. Ed. 334.

<sup>5</sup> *Love v. Dilley*, 64 Md. 238, 1 Atl. 59; *Emerson v. Mills*, 83 Tex. 385, 18 S. W. 805.

<sup>6a</sup> As to burden of proof as to *bona fide* ownership, see note 11 Am. St. Rep. 323.

<sup>6</sup> *Hillebrant v. Ashworth*, 18 Tex. 307.

<sup>7</sup> *Adams v. Moore*, 9 Port. 406.

the indorsee proceeds against the drawer, the payee is competent to testify as to the consideration for the indorsement.<sup>8</sup>

As a general rule the payee after having indorsed the note, is competent to prove any matters arising after the making of the note, which may affect the right of the holder to recover against the maker.<sup>9</sup>

The payee of a note who has indorsed it without recourse, is also a competent witness to prove its execution by the maker.<sup>10</sup>

In a proceeding against the acceptor, the drawer may testify for either party. And in an action by the indorsee against the drawer or acceptor, an indorser is in general a competent witness for either party. The testimony of an indorser standing indifferent is admissible to prove payment; time of negotiation by indorsement; alteration of date by fraud; want of interest in the indorsee; usury; and the fact of his own indorsement.<sup>11</sup>

In several of the states all the parties liable on a bill or note may be sued in one action, in which case, however, the parties are respectively entitled to the testimony of any other parties defendant in the suit, in the same manner as if they had been sued in several actions.

**§ 290. Declarations and admissions.** Declarations and admissions made by the owner of the note against his interest and before he has parted with title are admissible against him. But if he has parted with title and possession and is no longer interested in the instrument, then his declarations cannot be used as against a *bona fide* holder, who has purchased for value, before maturity and without notice.<sup>12</sup>

<sup>8</sup> State Bank v. Seawell, 18 Ala. 616.

<sup>9</sup> Curtis v. Marrs, 29 Ill. (19 Peck) 508.

<sup>10</sup> Davis v. Sawtelle, 30 Me. (17 Shep.) 389.

<sup>11</sup> Knights v. Putnam, 20 Mass. 184.

<sup>12</sup> As to effect of admission to change burden of proof, see note 61 L. R. A. 535.

## CHAPTER XXVI.

### EVIDENCE AS TO PARTICULAR CHARACTERISTICS.

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|---|--------------------------------------|
| § 291. As to time.                            | § 302. As to transfer.               |
| 292. As to date.                              | 303. As to conditions.               |
| 293. As to amount payable.                    | 304. As to mistake.                  |
| 294. As to place of payment.                  | 305. As to fraud and duress.         |
| 295. As to mode of payment.                   | 306. As to usury.                    |
| 296. As to interest.                          | 307. As to payment and discharge.    |
| 297. As to consideration.                     | 308. As to presentment and demand.   |
| 298. As to parties.                           | 309. As to protest and notice.       |
| 299. As to ambiguous or omitted stipulations. | 310. Bills and notes as evidences.   |
| 300. As to execution and delivery.            | 311. As to meaning of certain terms. |
| 301. As to acceptance of bills.               |                                      |

§ 291. *As to time.* Parol evidence is admissible to show the intention of the parties when the time of payment is ambiguous.<sup>1</sup> If an agreement is made subsequent to the execution of the instrument whereby an extension of time is agreed upon, parol evidence is admissible to establish such fact.<sup>2</sup> A renewal by advanced payment<sup>3</sup> or the giving of a renewal note,<sup>4</sup> is proof of an extension of time. Where an extension of time for a definite period has been indorsed upon an instrument pursuant to agreements, a consideration is to be presumed.<sup>5</sup> If an agreement is entered into at the same time as the execution of the bill or note, modifying, enlarging or extending the time of payment, parol evidence will not be admitted to show such agreement.<sup>6</sup> But if the instrument either by fraud, mistake or accident does not contain the true conditions or stipulations of the contract the

<sup>1</sup> McGhee v. Alexander, 104 Ala. 116, 16 So. 148; Des Moines Co. v. Hinkley, 62 Iowa 637, 17 N. W. 915; Union Bank v. Meeker, 4 La. Ann. 189, 50 Am. Dec. 559.

<sup>2</sup> Pierce v. Goldsberry, 31 Ind. 52; Ferguson v. Hill, 3 Stewart 483, 21 Am. Dec. 641; Merchants' Bank of Port Townsend v. Bussell, 16 Wash. 546, 48 Pac. 242; Bank of Horton v. Brooks, 64 Kans. 285, 62 Pac. 675.

<sup>3</sup> Mariners Bank v. Abbott, 28

Me. 280; Lime Rock Bank v. Mallett, 34 Me. 547, 56 Am. Dec. 673.

<sup>4</sup> Williams v. Wright, 69 Ga. 759; First Nat'l Bank of Hastings v. Lamont, 5 N. D. 393, 67 N. W. 145.

<sup>5</sup> St. Joe & Mineral Farm Consol. Min. Co. v. First Nat'l Bank, 10 Colo. App. 339, 50 Pa. 1055.

<sup>6</sup> Foglesong v. Wickard, 75 Ind. 258; Clark v. Allen, 132 Pa. St. 40, 18 Atl. 1071; Hall v. First Natl. Bank, 173 Mass. 16, 53 N. E. 154, 44 L. R. A. 319.

time of payment may, in such case, be prolonged by parol evidence.<sup>7</sup>

The following provisions as to time are found in the Negotiable Instruments Law:

*"In determining what is a 'reasonable time,' or an 'unreasonable time' regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case."*<sup>8</sup>

*"Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day."*<sup>9</sup>

§ 292. **As to date.** A presumption arises that the date upon a negotiable instrument is the time when the instrument was executed in case there is no evidence to the contrary.<sup>10</sup> The Negotiable Instruments Law provides:

*"Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance or indorsement, as the case may be."*<sup>10a</sup>

A presumption likewise arises that the instrument was made at the place where it is dated and that the maker resides at that place.<sup>11</sup> A presumption arises that the payee or holder in pursuance of his implied power to do so filled in the space by placing therein the date of the execution of the instrument.<sup>12</sup> And if the note circulates further with the date remaining blank the presumption arises that the indorsee is authorized to fill in the true date.<sup>13</sup> But the maker may fill in the blank date after the indorsement without discharging the indorser. In all the preceding cases parol evidence is admissible to show that the note was executed differently. In case a note is secured and the note described in

<sup>7</sup> *Wallace v. Richards*, 16 Utah 52, 50 Pac. 804; *Campbell v. Upshaw*, 7 Humph. (Tenn.) 185, 46 Am. Dec. 75.

<sup>8</sup> Neg. Ins. Law, § 193, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>9</sup> Neg. Ins. Law, § 194, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>10</sup> *Knisely v. Sampson*, 100 Ill. 573; *Elyton Co. v. Hood*, 121 Ala. 373, 25 So. 745.

<sup>10a</sup> Neg. Inst. Law, § 11.

<sup>11</sup> *Rudolph v. Breener*, 96 Ala. 189, 11 So. 314; *Bronte v. Leslie*, 30 Ill. App. 288; *Hall v. Harris*, 16 Ind. 180.

<sup>12</sup> *Overton v. Matthews*, 35 Ark. 146, 37 Am. Rep. 9. *Contra*, *Inglish v. Breuneman*, 9 Ark. 122, 47 Am. Dec. 735; *Emmons v. Carpenter*, 55 Ind. 329.

<sup>13</sup> *Hepler v. Mt. Carmell Sav. Bank*, 97 Pa. St. 420, 39 Am. Rep. 813.

the security contains a different date than that of the note itself, parol evidence is admissible to identify the note and the security and to show that they were delivered together and that they formed one transaction.<sup>14</sup>

The Negotiable Instruments Law further provides:

*"Except where an indorsement bears date after the maturity of the instrument every negotiation is deemed prima facie to have been effected before the instrument was overdue."*<sup>14a</sup>

§ 293. As to amount payable. The general rule of evidence is that a note which calls for an amount certain and definite cannot be varied as to the amount payable by means of parol evidence. But in case the note was given in settlement of mutual accounts parol evidence is admissible to show that the amount expressed in the note was greater than the amount due, by computation subsequently made by the party receiving the note on the basis of the original accounts showing a less amount due.<sup>15</sup> Where a note is given for purchase money and includes illegal attorney's fees parol evidence is admissible to show that the note included such illegal fees.<sup>16</sup> In case of a written contract to give a note for a certain amount and the note is made for a larger amount, parol evidence is allowed to show an oral agreement to insert the larger amount.<sup>17</sup>

Where the amount of a bill or note expressed in the marginal figures is inconsistent with that expressed in the body of the note parol evidence is inadmissible to show that the instrument was negotiated for the amount expressed in figures.<sup>18</sup> So also parol evidence is not admissible to show that a note given absolutely to the payee was to be held by him merely as security for an amount to be found due upon an accounting.<sup>19</sup> Where the note provides for attorney's fees, without stating any amount, the value of the attorney's services may be proved though not averred within the limits of the amount claimed.<sup>20</sup> In case the attorney of the holder of the note agreed to take one-fourth of the attorney's fees such fact is admissible and limits the amount necessary to be paid by the maker.<sup>21</sup> If the amount of the attor-

<sup>14</sup> Brown v. Holyoke, 53 Me. 9. See also, Ohio Life Ins. & Trust Co. v. Winn, 4 Md. Ch. 253.

<sup>14a</sup> Neg. Inst. Law, § 45.

<sup>15</sup> Law v. Freeman, 117 Ind. 341, 20 N. E. 242.

<sup>16</sup> Macomb v. Wilkinson, 83 Mich. 486, 47 N. W. 336.

<sup>17</sup> Davidson v. Bodley, 27 La. Ann. 149.

<sup>18</sup> Poorman v. Mills & Co., 39 Cal. 345, 2 Am. Rep. 451.

<sup>19</sup> Ives v. Farmers Bank, 2 Allen 236; Wilson v. Wilson, 26 Ore. 251, 38 Pac. 185.

<sup>20</sup> Harney v. Baldwin, 124 Ind. 59, 26 N. E. 222; Starnes v. Schofield, 5 Ind. App. 4, 31 N. E. 480.

<sup>21</sup> Harvy v. Baldwin, *supra*.

ney's fee is not expressed in the body of the note evidence is admissible to show the amount of a reasonable fee.<sup>22</sup>

§ 294. **As to place of payment.** It is presumed unless there is evidence to the contrary, that a note or bill of exchange is to be paid or accepted at the place where dated.<sup>23</sup> But parol evidence is admissible to make certain the designation of the place of payment.<sup>24</sup> If a note is made in one state and dated in another the presumption is that it is payable at the place where dated and that it is to be governed by the laws of that place.<sup>25</sup> If no special place or locality is set out the presumption is that it is payable at the place of business of the maker or payee.<sup>26</sup> If the note does not state a place of payment it is deemed payable anywhere upon demand being made after it matures and it is not necessary that it be payable at the office of the maker.<sup>27</sup> But if the note or bill is made payable at a certain place designated in the instrument itself it is to be presumed payable at that place.<sup>28</sup> If made payable at a bank it is presumed to be subject to the known lawful usages and customs of such bank.<sup>29</sup> If the place of payment does not appear upon the instrument parol evidence may be introduced to show that there was an agreement as to the place of payment.<sup>30</sup> If the place of payment is not clearly set out in the bill or note parol evidence is admissible to make the place of payment clear and certain.<sup>31</sup> But parol evidence cannot be introduced to change or vary the terms of the instrument or to show that a bill or note payable generally is to be paid at a particular bank.<sup>32</sup>

§ 295. **As to mode of payment.** If the mode of payment is not definitely expressed in the instrument parol evidence may be introduced to show the intention of the parties as to the mode of payment in dollars or any other kind of money or to show that the mode of payment<sup>a</sup> was omitted by mistake.<sup>33</sup> Where the par-

<sup>22</sup> Glenn v. Porter, 72 Ind. 525.

<sup>23</sup> Biglow v. Burnham, 83 Iowa 120, 49 N. W. 104; Bullard v. Thompson, 35 Tex. 313.

<sup>24</sup> Comstock v. Savage, 27 Conn. 184; Lane v. Union Natl. Bank of Massillon, 3 Ind. App. 299, 29 N. E. 613.

<sup>25</sup> Tillotson v. Tillotson, 34 Conn. 335.

<sup>26</sup> Equitable Life Ins. Co. v. Gleason, 56 Iowa 47, 8 N. W. 790; Hartford Bank v. Greene, 11 Iowa 476; Holtz v. Boppe, 37 N. Y. 634.

<sup>27</sup> Engler v. Ellis, 16 Ind. 475.

<sup>28</sup> Abt v. American Trust & Savings Bank, 159 Ill. 407, 42 N. E. 856; Davis v. McAlpine, 10 Ind. 137; Way v. Butterworth, 106 Mass. 75.

<sup>29</sup> Mills v. Bank of U. S., 11 Wheat. 431, 6 L. Ed. 512; Marrett v. Brackett, 60 Me. 524.

<sup>30</sup> McKee v. Boswell, 33 Mo. 567.

<sup>31</sup> Comstock v. Savage, 27 Conn. 184.

<sup>32</sup> Alden v. Barbour, 3 Ind. 44; Faulkner v. Faulkner, 73 Mo. 327.

<sup>33</sup> Cook v. Lillo, 103 U. S. 792, 26 L. Ed. 460; Williams v. Arnis,

ties used the words current funds intending thereby money, parol evidence is admissible to show such intention.<sup>34</sup> If the word currency was used and it was known to the parties at the time that this word had a local significance different from its usual meaning, parol evidence will be admissible to show that they contracted with reference to this meaning.<sup>35</sup> But if the mode of payment is sufficiently designated in the bill or note parol evidence will not be admissible to show a different mode of payment.<sup>36</sup> All oral agreements or stipulations between the parties, as to the mode of payment, which preceded or accompanied the execution of the instrument, are to be regarded as merged in it, and the latter is to be treated as the exclusive medium of ascertaining the agreement to which the parties bound themselves.

§ 296. *As to interest.* Parol evidence is admissible to prove that the rate of interest expressed in the note is a mistake<sup>37</sup> or to show an agreement as to an increased rate of interest indorsed on the note upon a consideration granting an extension of time.<sup>38</sup> If there was a parol agreement upon a sufficient consideration to change the rate of interest this may be shown.<sup>39</sup> If the principal of a note has been paid but the interest still remains unpaid, the note may be used as evidence in an action to recover interest on it.<sup>40</sup> A stub from which a certificate of deposit was taken containing a memorandum of agreement to pay interest on the certificate, is admissible in evidence to show such agreement.<sup>41</sup>

Where the declaration describing a note makes no mention of interest the note bearing interest is inadmissible and is considered to be a material variance with the pleading.<sup>42</sup>

§ 297. *As to consideration.* A presumption arises in all negotiable instruments as to a consideration being given<sup>43</sup> and the burden of proof is upon the maker to show a want or failure of consideration.<sup>44</sup> But in case the maker was insane or under some

30 Tex. 37; Calbreath v. Va. Co. 22 Gratt. (Va.) 697; Juskoe v. Proctor, 6 T. B. Mon. (Ky.) 311.

<sup>34</sup> Haddock v. Woods, 46 Iowa 433.

<sup>35</sup> Pilmer v. Branch of Des Moines State Bank, 16 Iowa 321.

<sup>36</sup> Tucker v. Talbott, 15 Ind. 114; Stein v. Fogarty (Idaho), 43 Pac. 681.

<sup>37</sup> Hathaway v. Brady, 23 Cal. 121.

<sup>38</sup> Bradshaw v. Combs, 102 Ill. 428.

<sup>39</sup> Hunt v. Hall, 37 Ala. 702.

<sup>40</sup> Mensing v. Ayres, 2 Willson (Tex. Cir. Ct. App.) 563.

<sup>41</sup> Thomson v. Beal, 48 Fed. 614.

<sup>42</sup> Beach v. Curle, 15 Mo. 105; Sawyer v. Patterson, 11 Ala. 523; Gragg v. Frye, 32 Me. 283.

<sup>43</sup> Halsted v. Lyon, 2 McLean 226; Louisville E. & St. L. R. Co. v. Caldwell, 98 Ind. 245; Sollenberger v. Stephens, 46 Kans. 386, 26 Pac. 690; Perley v. Perley, 144 Mass. 104, 10 N. E. 726.

<sup>44</sup> 83 Ala. 213, 3 So. 422; Beeson v. Howard, 44 Ind. 413; Armstrong v. Davis, 41 Cal. 494.

legal disability at the time of the execution of the instrument the holder must prove consideration.<sup>45</sup> The instruments themselves are admissible in evidence when the question of consideration is raised and circumstantial evidence is admissible to show a want of consideration or usury.<sup>46</sup> Parol evidence may be introduced to explain<sup>47</sup> or impeach the consideration of a negotiable instrument.<sup>48</sup> But parol evidence cannot be introduced to establish a consideration which will vary the terms of the instrument.<sup>49</sup>

§ 298. *As to parties.* The instrument is presumed to correctly exhibit the character in which the parties signed the bill or note.<sup>50</sup> If the name of the maker and payee are the same they will be presumed to be different persons as to the rights of the assignee.<sup>51</sup> Where the maker draws an instrument payable to his own order, bearing the indorsement of another person, the presumption is that the indorsement was for the maker's accommodation.<sup>52</sup> Where a person signs an instrument and adds to his signature any words as executor, guardian, trustee, receiver, agent or officer it will be presumed that he signed as a principal and not in a representative capacity.<sup>53</sup> But this presumption may be overcome by evidence to the contrary. Where two or more persons sign a note as maker the presumption is that they are equally bound as such and that the debt evidenced by the note was created for the benefit of the joint makers unless a different showing could be made.<sup>54</sup> The order in which the makers sign a note does not in and of itself create a presumption of suretyship.<sup>55</sup> If a note is given by a member of a firm as a partnership note it is presumed that it is given for a partnership debt.<sup>56</sup> But if

<sup>45</sup> *Hosler v. Beard*, 54 Ohio St. 398, 43 N. E. 1040.

<sup>46</sup> *Nicholls v. Van Valkenburgh*, 15 Hun 230; *Vogt v. Butler*, 105 Mo. 479, 16 S. W. 512; *Guenther v. Amsden*, 162 N. Y. 601, 57 N. E. 1111.

<sup>47</sup> *First Natl. Bank v. Nugent*, 99 Ind. 160; *Walker v. Sherman*, 11 Metc. 170; *Post v. Brown*, 55 Ill. App. 355.

<sup>48</sup> *Colt v. McConnell*, 116 Ind. 249; *Daw v. Niles* (Cal.), 33 Pac. 1114.

<sup>49</sup> *Hubbard v. Marshall*, 50 Wis. 322, 6 N. W. 497; *Langan v. Langan*, 89 Cal. 186, 26 Pac. 764. As to admissibility of parol evidence to prove relation of parties, see note 1 L. R. A. 817.

<sup>50</sup> *Brunswick Balke-Collender Co. v. Bautell*, 45 Minn. 21, 47 N. W. 261.

<sup>51</sup> *Cooper v. Poston*, 1 Duval (Ky.) 92, 85 Am. Dec. 610.

<sup>52</sup> *Hendrie v. Berkowitz*, 37 Cal. 113, 90 Am. Dec. 251; *Overton v. Hardin*, 6 Cald. (Tenn.) 375.

<sup>53</sup> *Carter v. Thomas*, 3 Ind. 213; *Germania Bank v. Minchand*, 62 Minn. 459, 65 N. W. 70, 30 L. R. A. 186; *Wood v. Truax*, 39 Mich. 628.

<sup>54</sup> *McClelland v. McClelland*, 42 Mo. App. 32.

<sup>55</sup> *Summerhill v. Tapp*, 52 Ala. 227; *McPherson v. Andes*, 75 Mo. App. 204.

<sup>56</sup> *Trader's Bank v. Brodner*, 43 Barb. (N. Y.) 379.



the note given by one member of the partnership appears to be given for an individual debt it is presumed that the firm did not consent to the note unless it can be affirmatively shown that they did.<sup>57</sup> Where a person signs a note under a representative description, parol evidence is admissible to show that he made the note in a representative capacity,<sup>58</sup> but the personal liability of persons signing with such description cannot be disproved by parol evidence.<sup>59</sup> Where the note is signed by one member of a firm, parol evidence is admissible to show that the note represents a firm obligation.<sup>60</sup>

A note payable to a person whose name is used as a firm name is presumed to be given to him individually and not to the firm unless it can be shown that they were the intended payees.<sup>61</sup> If a note is payable to a person designating him in a representative capacity, the presumption is that it was payable to him individually.<sup>62</sup> If a note is payable to a cashier, parol evidence is admissible to show that he received the note as cashier and agent for a particular bank.<sup>63</sup> Parol evidence is also admissible to show that a note payable to a person designated in an official capacity was received by him in an official capacity for a corporation.<sup>64</sup>

**§ 299. As to ambiguous or omitted stipulations.** The Negotiable Instruments Law provides, as follows, as to ambiguous stipulations:

*"Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply: (1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount; (2) where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof; (3) where the instrument is not dated, it will be considered to be dated as of the time it was issued; (4) where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail; (5) where the instrument is so ambiguous that*

<sup>57</sup> Allen v. Carey, 33 La. Ann. 1455.

<sup>58</sup> LaSalle Nat. Bank v. Tolu Rock & Rye Co., 14 Ill. App. 141; Kraniger v. Peoples Bldg. Soc., 60 Minn. 94, 61 N. W. 904.

<sup>59</sup> Prescott v. Hixson, 22 Ind. App. 139, 53 N. E. 391.

<sup>60</sup> Holmes v. Porter, 39 Me. 157.

<sup>61</sup> Boyle v. Skinner, 19 Mo. 82.

<sup>62</sup> Beach v. Peabody, 188 Ill. 75, 58 N. E. 679.

<sup>63</sup> Nave v. First Natl. Bank, 87 Ind. 204.

<sup>64</sup> Southern L. Ins. & Trust Co. v. Gray, 3 Fla. 262.

*there is doubt whether it is a bill or note, the holder may treat it as either at his election; (6) where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser; (7) where an instrument containing the words 'I promise to pay' is signed by two or more persons they are deemed to be jointly and severally liable thereon."*<sup>65</sup> This is the law generally.

And the Negotiable Instruments Law provides as follows as to instruments executed before its passage and as to matters not provided for in the act:

*"The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof."*<sup>66</sup>

*"In any case not provided for in this act the rules of the law merchant shall govern."*<sup>67</sup>

**§ 300. As to execution and delivery.** The general rule of evidence is that the instrument is presumed to have been executed and delivered at the maker's residence<sup>68</sup> and at the time indicated by the date thereof.<sup>69</sup> The possession of the instrument by the holder is presumptive evidence of delivery;<sup>70</sup> and the holder must prove the execution of the instrument;<sup>71</sup> execution may also be proved by circumstantial evidence.<sup>72</sup> The fact that one person signed a note for another at his direction in his presence may be shown by parol evidence.<sup>73</sup> Parol evidence may be used to show that a note in the hands of the payee was not intended to be delivered,<sup>74</sup> but it cannot be used to show that it was delivered to him as an escrow.<sup>75</sup>

**§ 301. As to acceptance of bills.** The presumptions as to the acceptance of bills of exchange is that the acceptor knows the signature of the drawer,<sup>76</sup> and that he (the acceptor) has sufficient

<sup>65</sup> New. Ins. Law, § 17, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>66</sup> Neg. Ins. Law, § 195, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>67</sup> Neg. Ins. Law, § 196, where all cases directly or indirectly bearing upon or citing the Law are grouped.

<sup>68</sup> McAuliff v. Reuter, 61 Ill. App. 32; Strawberry Point Bank v. Lee, 117 Mich. 122, 75 N. W. 444.

<sup>69</sup> Ely Law Co. v. Hood, 121 Ala.

373, 25 So. 745; Hopkins v. Miller, 17 N. J. Law 185.

<sup>70</sup> Pastene v. Pardini, 135 Cal. 431, 67 Pac. 681.

<sup>71</sup> McRae v. Handeshell, 88 Ill. App. 428.

<sup>72</sup> Victor v. Swisky, 87 Ill. App. 583.

<sup>73</sup> Morton v. Murray, 176 Ill. 54, 51 N. E. 767.

<sup>74</sup> Scaife v. Byrd, 39 Ark. 568.

<sup>75</sup> Garner v. Fite, 93 Ala. 405, 9 So. 367.

<sup>76</sup> U. S. v. Bank of Georgia, 10 Wheat. 333, 6 L. Ed. 334; White v. Continental Natl. Bank, 64 N. Y. 316, 21 Am. Rep. 612,

funds of the drawer in his hands with which to meet the demand;<sup>77</sup> however, evidence may be introduced to show the contrary. If the acceptance is not plain and clear but is ambiguous the same may be explained by parol evidence.<sup>78</sup> If there has been an oral acceptance of a bill the same may be shown by parol evidence.<sup>79</sup> Where a person who has accepted a bill for accommodation sues the drawer he must prove both the acceptance and the payment by him.<sup>80</sup> But the fact that the acceptance was for the accommodation of the drawer cannot be shown by parol evidence as against the payee.<sup>81</sup>

§ 302. As to transfer. The presumption is that a transferee or holder has procured the instrument in good faith for value and without notice of equities.<sup>82</sup> The party alleging the want of good faith, value or notice has the burden of proof showing the same.<sup>83</sup> But where the instrument in its inception was obtained by fraud or upon an illegal consideration the burden of proof is upon the holder to show that he is a *bona fide* purchaser.<sup>84</sup>

The indorsee who sues upon a note and produces the instrument need not give other evidence of ownership to make out a *prima facie* case.<sup>85</sup> A testator has been held to be the owner of an instrument where the payee's day book showed a transfer to the deceased.<sup>86</sup> A transfer of a note may be proven by the payee's admission without proof of his signature.<sup>87</sup>

All acts which show a wilful failure of inquiry and gross negligence in purchasing are admissible as tending to show bad faith on the part of the purchaser.<sup>88</sup>

Evidence is admissible to show that an indorsee suing upon a note had notice that the payee usually loaned money at a usuri-

<sup>77</sup> Turner v. Browder, 5 Bush. 216; Trego v. Lowrey, 8 Neb. 238.

<sup>78</sup> Gallagher v. Black, 44 Me. 99; Laften & Rand Powder Co. v. Sinzheimer, 48 Md. 411, 30 Am. Rep. 472.

<sup>79</sup> Pierce v. Kittridge, 115 Mass. 374.

<sup>80</sup> Nichols v. Morgan, 9 La. Ann. 534.

<sup>81</sup> Noevak v. Excelsior Stone Co., 78 Ill. 307.

<sup>82</sup> Leening v. Wise, 64 Cal. 410; Forbes v. National Forge & Iron Co., 50 Ill. App. 503; Challiss v. Woodburn, 2 Kans. App. 652, 43 Pac. 792.

<sup>83</sup> Goodman v. Simonds, 20 How. 343, 15 L. Ed. 934; Credit Co. v. Home Mach. Co., 54 Conn. 357, 8 Atl. 472.

<sup>84</sup> Kniss v. Holbrook (Ind. App.), 40 N. E. 1118; Galbraith v. McLaughlin, 91 Iowa 399, 59 N. W. 338.

<sup>85</sup> Dawson Town & Gas Co. v. Woodhull, 67 Ind. 451, 14 C. C. A. 464.

<sup>86</sup> Macomb v. Wilkinson, 83 Mich. 486, 47 N. W. 336.

<sup>87</sup> McKown v. Mathes, 19 La. (O. S.) 542.

<sup>88</sup> Rowland v. Fowler, 47 Conn. 347.

ous rate.<sup>80</sup> The fact that the purchaser had knowledge of the fraudulent manner in which similar notes were procured by the payee may be shown by evidence as tending to show bad faith on the part of the purchaser.<sup>80</sup> If the note was merely indorsed for collection<sup>81</sup> or as collateral security<sup>82</sup> or for any particular purpose the same may be shown by parol evidence.<sup>82a</sup>

§ 303. As to conditions. If the conditions are written on the note, either at the bottom or on the margin, before delivery they are presumed to be a part of the original obligation.<sup>83</sup> But if these conditions are in the form of a memorandum and contradictory in themselves they are deemed no part of the note.<sup>84</sup> If the conditions on the note are executed in one state and the note is payable in another state the presumption is that they were expressed with reference to the law of the state where the instrument is payable.<sup>85</sup> Where an instrument for the payment of money was delivered pursuant to an oral agreement that it should become binding only upon a future condition or contingency, parol evidence is admissible against the payee or holder with notice to show such agreement.<sup>86</sup> Where a bill of exchange was drawn for the purpose of canceling the drawer's funds on condition that it should take effect only in case of an attachment such fact may be shown by parol evidence.<sup>87</sup> Parol evidence is admissible to show that at the time of making a note, it was orally agreed that it should be payable from the proceeds of a mill and that if there were no proceeds it was to be returned and destroyed.<sup>88</sup> An agreement entered into at the time the note was executed, to the effect that the note should be returned upon a certain day if demanded, may be shown by parol evidence.<sup>89</sup> But the general rule is that parol evidence is inadmissible to show that an instrument, absolute in its terms, was to be paid only on a condition or contingency.<sup>1</sup> Thus parol evidence is not admissible to prove an

<sup>80</sup> *Blackwell v. Wright*, 27 Neb. 269, 43 N. W. 116, 20 Am. St. Rep. 662.

<sup>80</sup> *Bowman v. Metzger*, 27 Or. 23, 39 Pac. 3, 44 Pac. 1090.

<sup>81</sup> *Church v. Barlow*, 9 Pick. 547. See note 17 L. R. A. (N. S.) 838.

<sup>82</sup> *Stack v. Beach*, 74 Ind. 571, 39 Am. Rep. 113.

<sup>82a</sup> As to parol evidence to explain indorsement. See note 4 A. L. R. 764.

<sup>84</sup> *Edelen v. Worth*, 69 Mo. App. 124.

<sup>84</sup> *Way v. Batchelder*, 129 Mass. 301.

<sup>85</sup> *Farmers Trust Co. v. Schenit*, 83 Ill. App. 267.

<sup>86</sup> *Smith v. Mussetter*, 58 Minn. 159, 59 N. W. 995.

<sup>87</sup> *Stevens v. Parker*, 7 Allen 361.

<sup>88</sup> *Roberts v. Greig*, 15 Colo. App. 378, 62 Pac. 574.

<sup>89</sup> *McFarland v. Sikes*, 54 Conn. 250, 7 Atl. 408.

<sup>1</sup> *Brown v. Wiley*, 20 How. 442, 15 L. Ed. 965; *Kempshall v. Vedder*, 79 Ill. App. 368. As to ad-

oral agreement entered into contemporaneous with a note, providing that the note which is absolute and payable at a time certain, was not to be paid if certain land was not paid for;<sup>2</sup> neither can it be shown that a parol agreement providing that a note was not to be operative or collected until certain other securities for the same debt had been exhausted.<sup>3</sup> But if the conditions of the note or other obligation for money have been reduced to writing contemporaneously with the instrument, such writing will be admissible as evidence as being part of the same contract.<sup>4</sup> In an action by the indorsee of a note, which is negotiable in form, against the maker, an oral agreement between the maker and payee that the note was not to be negotiated cannot be shown.<sup>5</sup>

**§ 304. As to mistake.** The burden of proving that there is a mistake in an instrument is on the party alleging the mistake,<sup>6</sup> but this, in general, can only be proved as between the original parties, or those having notice.

Parol evidence may be introduced to show a mistake between the parties upon an instrument in settlement, or to show the amount of actual indebtedness upon a note held by written agreement as collateral security for the balance due on settlement.<sup>7</sup>

**§ 305. As to fraud and duress.** Parol evidence may be introduced in a proper case to show that the execution or indorsement of a note was obtained through fraud or misrepresentations;<sup>8</sup> but in order to relieve the maker it must be clearly established. The defense of fraud or duress can be established by a mere preponderance of evidence.<sup>9</sup> Any evidence which will tend in any manner to establish a defense of fraud or duress is admissible.<sup>10</sup> Fraud in obtaining a negotiable instrument may be established by the circumstantial evidence tending to prove the same.<sup>11</sup> Where relief is sought in equity for alleged fraud or duress in procuring a negotiable instrument the same may be shown by parol evidence.<sup>12</sup> But parol evidence is not admissible

missibility of parol evidence of condition to vary or contradict, see note 3 L. R. A. 363.

<sup>2</sup> Gliddens v. Harrison, 59 Ala. 481.

<sup>3</sup> Fisher v. Briscoe, 10 Mont. 124, 25 Pac. 30.

<sup>4</sup> Gerrish v. Glines, 50 N. H. 9; Munro v. King, 30 Col. 238.

<sup>5</sup> McSherry v. Brooks, 46 Md. 103.

<sup>6</sup> Sheby v. Brooks, 114 Mich. 11.

<sup>7</sup> Thomas v. Thomas, 7 Wis. 476.

<sup>8</sup> Blake v. State Bank, 78 Ill.

App. 166, 178 Ill. 182, 52 N. E. 957; Stout v. Judd, 10 Kans. App. 579, 63 Pac. 662.

<sup>9</sup> Sherwood v. First Natl. Bank, 17 Ill. App. 591; Rossiter v. Laeber, 18 Mont. 372, 45 Pac. 560.

<sup>10</sup> Maples v. Browne, 48 Pa. St. 458; Behl v. Schuett, 104 Wis. 76, 80 N. W. 73.

<sup>11</sup> Maxson v. Llewelyn, 122 Cal. 195, 54 Pac. 732.

<sup>12</sup> Fitzmaurice v. Mosier, 116 Ind. 563, 16 N. E. 175, 19 N. E. 180, 9 Am. St. Rep. 854.

to show a fraudulent promise to surrender a note or bill.<sup>13</sup> Payment may be proven by a preponderance of evidence and any evidence is admissible which tends to corroborate or rebut a presumption of payment. Parol evidence may be introduced to explain or contradict a receipt of payment. Parol evidence can be used to show that indorsements on a note were for one and the same sum.

§ 306. **Usury.** It is not necessary to establish usury by direct evidence, but facts and circumstances which will tend to establish usury may be proved. The burden of proving usury is upon the party setting it up as a defense and a mere preponderance of the evidence will establish usury. Parol evidence may be admitted to show an agreement for usurious interest, and to prove that it was paid.

§ 307. **As to payment and discharge.** The possession of a note by the payee is *prima facie* evidence of non-payment<sup>14</sup> while the possession of the instrument by the maker creates a rebuttable presumption of payment.<sup>15</sup> The presumption is that a note or other instrument has been paid when due.<sup>16</sup>

If there is no evidence to the contrary the presumption is in some jurisdictions that the taking of a negotiable instrument for a debt is a payment of the debt.<sup>17</sup> The presumption as to a check is that it is in payment of money due rather than for a loan.<sup>18</sup> Although the language of a check imports full payment, it is only *prima facie*, and not conclusive evidence of that fact.<sup>19</sup>

The person having possession of a negotiable instrument is *prima facie* entitled to receive payment,<sup>20</sup> and anyone alleging payment to a person who is not in possession of the instrument must also show that this person was authorized to receive payment.<sup>21</sup>

§ 308. **As to presentment and demand.** Parol evidence is admissible to prove demand,<sup>22</sup> to show an agreement for demand at a particular place<sup>23</sup> and to show a waiver of demand.<sup>24</sup>

<sup>13</sup> Henderson v. Thomson, 52 Ga. 149.

<sup>14</sup> Pastene v. Pardini, 135 Cal. 432, 67 Pac. 681; Ritter v. Schenk, 101 Ill. 387.

<sup>15</sup> Lipscomb v. Le Lemos, 68 Ala. 592; Callahan v. Bank of Ky., 82 Ky. 231.

<sup>16</sup> Richardson v. Cambridge, 2 Allen 118, 79 Am. Dec. 767.

<sup>17</sup> Bunker v. Barron, 79 Me. 62, 8 Atl. 253, 1 Am. St. Rep. 282.

<sup>18</sup> Yates v. Shepardson, 39 Wis. 173.

<sup>19</sup> Greer v. Laws, 56 Ark. 37, 18 S. W. 1038.

<sup>20</sup> Paulman v. Claycomb, 75 Ind. 64; Whelan v. Reilly, 61 Mo. 565.

<sup>21</sup> Hall v. Smith, 3 Kans. App. 685, 44 Pac. 908; Loy v. Hovey (Neb.), 89 N. W. 998.

<sup>22</sup> Hunt v. Malbee, 7 N. Y. 266.

<sup>23</sup> Meyer v. Hibsher, 47 N. Y. 265.

<sup>24</sup> Porter v. Kimball, 53 Barb. 467.

A note payable at a bank, which remains there, is presumed to have been presented there for payment when due,<sup>25</sup> and the cashier of the bank is presumed to have done his duty to be at the bank to receive payment during business hours of the last day of payment.<sup>26</sup>

It has been held sufficient evidence of demand and refusal that no funds were provided to meet a note payable at a bank when properly presented when due, at the bank within banking hours.<sup>27</sup>

It is presumed when a bill of exchange is drawn that it is drawn against funds sufficient to meet it; but it has been held that where there are no funds to meet it, then it is presumed that the drawer knew this and that he did not expect it to be paid, and that therefore it is not necessary to present and give notice, as he could not be injured by such a failure.

The burden of explaining delay, or cause of failure to present when due, is on the holder.

**§ 309. As to protest and notice.** The question of notice of dishonor may be supplemented or explained by evidence of the notary in addition to his certificate of protest.<sup>28</sup> Notice of protest, however, may be proved by any other competent evidence.<sup>29</sup> In case of a foreign bill of exchange it has been held that no evidence can be given of the protest for non-acceptance without producing the protest itself or showing that both the original and the books are lost.<sup>30</sup> The certificate of protest may be contradicted and a waiver of notice may be shown by parol.<sup>31</sup>

**§ 310. Bills and notes as evidences.** If the signature to the instrument is not properly denied a bill or note is admissible in evidence without proof of the signature.<sup>32</sup> A note offered in evidence as being one secured by a mortgage or deed of trust may be identified by parol evidence.<sup>33</sup> When the action is upon an old note which has been renewed, the renewed note must be produced in court, if not previously delivered.<sup>34</sup> A suit cannot be maintained upon negotiable instruments which have been executed in lieu of outstanding negotiable notes of the same maker

<sup>25</sup> *Dykman v. Northridge*, 1 App. Div. 26, 36 N. Y. Supp. 962.

<sup>26</sup> *Folger v. Chase*, 18 Pick. (Mass.) 63.

<sup>27</sup> *Gillett v. Averill*, 5 Denio (N. Y.) 85.

<sup>28</sup> *Bliss v. Paine*, 11 Mich. 92; *Wetherall v. Clagett*, 28 Md. 465.

<sup>29</sup> *Eddy v. Peterson*, 22 Ill. 535.

<sup>30</sup> *Ky. Com. Bank v. Barksdale*, 36 Mo. 563.

<sup>31</sup> *Applegarth v. Abbott*, 64 Cal. 459, 2 Pac. 43.

<sup>32</sup> *Richardson v. Comstock*, 21 Ark. 69; *Talbott v. Kennedy*, 76 Ind. 282.

<sup>33</sup> *Kiser v. Carrollton D. G. Co.*, 96 Ga. 76, 22 S. E. 303; *Cutter v. Steele*, 93 Mich. 204, 53 N. W. 521.

<sup>34</sup> *Miller v. Woods*, 21 Ohio St. 485, 5 Am. Rep. 71.

unless these outstanding obligations are produced and surrendered.<sup>35</sup> At the hearing of a suit upon any negotiable instrument the instrument must be produced or there must be an excuse for its non-production.<sup>36</sup>

§ 311. As to meaning of certain terms. As to the meaning of certain terms the Negotiable Instruments Law makes the following provisions:

*"Action" includes counterclaim and set-off.*

*"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.*

*"Bill" means bill of exchange, and "note" means negotiable promissory note.*

*"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.*

*"Instrument" means negotiable instrument.*

*"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.*

*"Person" includes a body of persons, whether incorporated or not.*

*"Written" includes printed, and "writing" includes print.<sup>37</sup>*

<sup>35</sup> Garner v. Cohen, 99 Ga. 78, 24 S. E. 851.

<sup>36</sup> O'Neil v. O'Neil, 123 Ill. 361, 14 N. E. 844.

<sup>37</sup> Neg. Ins. Law, § 191, where all cases directly or indirectly bearing upon or citing the Law are grouped.



## CHAPTER XXVII.

### TRIAL PROCEDURE ON BILL, NOTE OR CHECK.

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|---------------------------------|--|
| § 312. Essentials of procedure. | § 318. Evidence of plaintiff           |
| 313. Common law procedure.      | 319. Evidence of defendant.            |
| 314. Code procedure.            | 320. The argument.                     |
| 315. Steps in a jury trial.     | 321. The charge, verdict and judgment. |
| 316. Impaneling the jury.       |  |
| 317. Opening statements.        |  |

**§ 312. Essentials of procedure.** In a proceeding on a note, bill or check, the following steps are essential whether the procedure is the common law or the code:

- (a) An application to the courts for recovery on the note, bill or check.
- (b) The process.
- (c) Appearance of the adverse party.
- (d) Pleadings.
- (e) A trial.
- (f) A decision.
- (g) Its enforcement.<sup>1</sup>

**§ 313. Common law procedure.** When the procedure is under common law, the following steps appear:

- (a) Suit is commenced by the filing of a *præcipe* and the issuing of an original writ.
- (b) The defendant appears either in person or by attorney.
- (c) The pleadings are as follows:
  - (1) The plaintiff's declaration on the bill, note or check.
  - (2) The defendant's plea, or when he wishes to raise a question of law, his demurrer.
  - (3) The plaintiff's replication to the plea.
  - (4) The defendant's rejoinder.
  - (5) The plaintiff's surrejoinder.
  - (6) The defendant's rebutter.
  - (7) The plaintiff's surrebutter.
- (d) The trial is usually by jury.
- (e) The decision of the jury is called a verdict, upon which the court renders a judgment.
- (f) The judgment is enforced by means of an execution.<sup>2</sup>

<sup>1</sup> Perry on Common Law Pleading, Chapt. vii; Smith's Elementary Law.

<sup>2</sup> Perry on Common Law Pleading, Chapt. vii; Smith's Elementary Law.

§ 314. **Code procedure.**<sup>3</sup> When the procedure is under a code, the following steps usually occur:

(a) Suit is commenced by filing a complaint or petition on the bill, note or check.

(b) The writ by which the defendant is notified that a suit has been filed against him on the bill, note or check is usually called a summons.

(c) The defendant may appear either in person or by attorney.

(d) The only pleadings usually allowed are:

(1) The complaint or petition on the bill, note or check.

(2) The answer or demurrer of the defendant to the complaint or petition.

(3) The reply of the plaintiff to the answer or demurrer to the answer.

(4) The demurrer by defendant to the reply.

(e) The trial may be with or without jury.

(f) The court's decision may take the form of a judgment or a decree, according to whether the action is of a legal or equitable nature.

(g) If the action is legal in its nature the judgment is enforced by execution; if equitable, by contempt of court proceedings.

§ 315. **Steps in a jury trial.** For convenience a jury trial may be divided into seven different steps as follows:

(a) Impaneling the jury.

(b) Opening statements on behalf of plaintiff and defendant.

(c) Evidence produced on behalf of plaintiff and defendant.

(d) Argument on behalf of plaintiff and defendant.

(e) Charge by the court to the jury.

(f) Verdict of jury.

(g) Judgment rendered by the court.<sup>3a</sup>

§ 316. **Impaneling the jury.** The first step in the trial is the impaneling of the jury. Almost universally in the states the jury consists of 12 men.<sup>4</sup> These men should be disinterested in the matter in litigation and should be entirely impartial.<sup>5</sup> Each party has the right to object to a certain person's sitting as a juror in his case, and, if proper reasons for the objection are given, the person so objected to cannot sit on the jury; this

<sup>3</sup> Bliss on Code Pleading, Chapt. 2 Wis. 22; Cooley's Const. Lim. x, *et seq*; Smith's Elementary Law. (5th Ed.) 391.

<sup>3a</sup> Smith's Elementary Law.

<sup>4</sup> Work v. State, 2 Ohio St. 296, 59 Am. Dec. 671; Norval v. Rice,

<sup>5</sup> Ensign v. Harney, 15 Neb. 330, 48 Am. Rep. 344; Melson v. Dickson, 63 Ga. 683, 36 Am. Rep. 128.

is called a challenge for cause.<sup>6</sup> It is customary for each party to be allowed to challenge from two to five persons peremptorily as jurors without assigning cause.<sup>7</sup> After each party has made his challenges or had an opportunity to do so, those men remaining are sworn in as the jury to try the case.

**§ 317. Opening statements.** Ordinarily as the second step, each party gives an outline of what he proposes to prove in what is known as an opening statement of the case to the jury.<sup>8</sup> The plaintiff makes his statement first and then the defendant makes his.<sup>9</sup>

**§ 318. Evidence of plaintiff.** Following this is the production of the testimony. In a proceeding on a promissory note, a bill of exchange or bank check some of the testimony exists in the form of documents, that is, in the form of written instruments and in such case the instruments themselves are introduced. Upon the bill, note or check being introduced in evidence the following six presumptions arise:

(a) A presumption of consideration or that a consideration was given for it by the plaintiff.<sup>10</sup>

(b) A presumption that there was the necessary delivery.<sup>11</sup>

(c) A presumption that all the terms of the instrument are stated therein.<sup>12</sup>

(d) A presumption of title on a good consideration from the fact of possession.<sup>13</sup>

(e) A presumption that the debt is unpaid; and<sup>14</sup>

<sup>6</sup> *Barrett v. Long*, 3 House of Lords Cases 395, 415; *Gilliam v. Brown*, 43 Miss. 641; *Loeffler v. Keokuk etc. Co.*, 7 Mo. App. 785.

<sup>7</sup> *Hayes v. Missouri*, 120 U. S. 68, 30 L. Ed. 578; *O'Neil v. Lake Superior Iron Co.*, 67 Mich. 560, 35 N. W. 162; *Gulf etc. Ry. Co. v. Keith*, 74 Tex. 287, 11 S. W. 1117.

<sup>8</sup> *Kley v. Healy*, 127 N. Y. 555, 28 N. E. 593; *Vawter v. Hultz*, 112 Mo. 633, 20 S. W. 689; *Elwell v. Chamberlin*, 31 N. Y. 611.

<sup>9</sup> *Elder v. Oliver*, 30 Mo. App. 575; *Cortelyou v. Hiatt*, 36 Neb. 584, 54 N. W. 964; *Bates v. Forcht*, 89 Mo. 121, 1 S. W. 120.

<sup>10</sup> *Perot v. Cooper*, 17 Colo. 80, 28 Pac. 391, 31 Am. St. Rep. 258; *Germania Bank v. Michand*, 62 Minn. 459, 65 N. W. 70, 54 Am. St.

Rep. 653, 30 L. R. A. 286; *Niblack v. Champeny*, 10 S. D. 165, 72 N. W. 402.

<sup>11</sup> *McFarland v. Sikes*, 54 Conn. 250, 7 Atl. 408, 1 Am. St. Rep. 111; *Schallehn v. Hubbard*, 64 Kan. 601, 68 Pac. 61; *Woodford v. Dorwin*, 3 Vt. 82, 21 Am. Dec. 573.

<sup>12</sup> *Hill v. Shields*, 81 N. C. 250, 31 Am. Rep. 499; *Rice v. Ragland*, 10 Humph. (Tenn.) 545, 53 Am. Dec. 737; *Dwiggins v. Merchants' Nat. Bank* (Tex. Civ. App.), 27 S. W. 171.

<sup>13</sup> *Borgess Invest. Co. v. Vetts*, 142 Mo. 560, 44 S. W. 754, 64 Am. St. Rep. 567; *Middleton v. Griffith*, 57 N. J. L. 442, 31 Atl. 405, 51 Am. St. Rep. 617; *Smith v. Lawson*, 18 W. Va. 212, 41 Am. Rep. 688.

<sup>14</sup> *Sampson v. Fox*, 109 Ala. 662,

(f) If the indorsement is undated, a presumption arises that it was made before maturity.<sup>15</sup>

These are well established principles. But proof of certain facts becomes necessary. It is necessary in the first instance to prove the signatures of all parties necessary to prove plaintiff's title.<sup>16</sup> This is usually done by witnesses, who after being sworn to testify to the truth, the whole truth, and nothing but the truth, are questioned with regard to what they know as to the signatures on the note, bill or check. The party producing the witness, or his attorney, first examines the witness, bringing out the testimony desired. This is called the "direct examination." The opposite party may then cross-examine the witness, asking him questions pertaining to the matter brought out on the direct examination. There is then usually a redirect examination, and usually a recross-examination is allowed.

If the bill, note or check sued upon is governed by the law of some state other than the one in which the action is pending that law must be alleged and proved. It is a general principle that the courts of a state or country cannot take judicial notice of the laws of a foreign state or country; and when such laws are sought to be applied, they must be alleged and proved.<sup>17</sup> When relied upon, they must be proved as facts,<sup>18</sup> otherwise it will be presumed that they are the same as the laws of the state in which suit is brought; or what is the same in effect, when the laws of the foreign country are not put in proof as facts, the court will apply to the transaction in suit the laws of the state in which suit is brought.<sup>19</sup> Thus the law as to the rate of damages will be presumed to be the same where the bill is drawn in one country, and is sued on in another,<sup>20</sup> so it will be presumed where the law of the place where suit is brought authorizes an indorsee to sue before exhausting recourse against the maker,<sup>21</sup>

19 So. 896, 55 Am. St. Rep. 950; *Morehead Banking Co. v. Walker*, 121 N. C. 115, 28 S. E. 253.

<sup>15</sup> *Snyder v. Riley*, 6 Pa. St. 164, 47 Am. Dec. 452; *McDowell v. Goldsmith*, 6 Md. 319, 61 Am. Dec. 305; *Smith v. Lawson*, 18 W. Va. 212, 41 Am. Rep. 688.

<sup>16</sup> *Chaffee v. Taylor*, 3 Allen 598; *First Nat. Bank of Houghton v. Robert*, 41 Mich. 709.

<sup>17</sup> *Birmingham Water Works Co. v. Hume*, 121 Ala. 168, 77 Am. St. Rep. 43; *Murtey v. Allen*, 71 Vt.

377, 76 Am. St. Rep. 779. Note 67 L. R. A. 33 *et seq.*

<sup>18</sup> *Owen v. Boyle*, 15 Me. 147, 32 Am. Dec. 143; *Nashua Savings Bank v. Anglo-American Co.*, 189 U. S. 221, 47 L. Ed. 782. See notes, 11 Am. Dec. 779 and 113 Am. St. Rep. 868.

<sup>19</sup> *McBride v. The Farmers Bank*, 26 N. Y. 450; *Crake v. Crake*, 18 Ind. 156.

<sup>20</sup> *Kuenzi v. Elvers*, 14 La. Ann. 391.

<sup>21</sup> *Beauer v. Briggs*, 4 La. 467; *Bernard v. Barry*, 1 Gr. 388.

that the law of the place of the contract is the same; and so, where by the law of the place where suit is brought a party signing in a certain way is regarded as an indorser the foreign law will be presumed to be the same.<sup>22</sup> But where the question is one relating to the law merchant, which is of general application, as for instance, the number of days of grace, it will be presumed that they were fixed by the law merchant—the law merchant being regarded as part of the common law.<sup>23</sup>

In case the instrument is one which must be protested in order for the plaintiff to recover then the fact of protest must be proved.

In a proceeding by the holder against the drawer or indorser of a bill, or the indorser of a note, the obligation of the defendant being to pay in the event the party primarily liable does not, it is necessary to prove the default of such party unless the proof be in some manner waived or dispensed with.<sup>24</sup> One who receives a bill or note is understood thereby to enter into an agreement with every other party, who would be entitled to bring an action on paying it, that he will present it in proper time to the drawee for acceptance,<sup>25</sup> when acceptance is necessary, and to the acceptor for payment, when the bill has matured;<sup>26</sup> and to give notice in a reasonable time, and without delay, to every such person, of a failure in the attempt to procure a proper acceptance or payment.<sup>27</sup> Thus in an action by the payee of a bill, or the indorsee of a bill or note, against the drawer or indorser, it is necessary to prove a presentment to the drawee for payment.

Presentment for payment as well as notice of dishonor may be proved by entries in the books of a deceased notary,<sup>28</sup> clerk,<sup>29</sup> messenger of a bank, or other person, whose duty or ordinary course of business it was to make such entries.

In an action against the drawer or indorser of a foreign bill (and even of an inland bill, if a protest is alleged) the plaintiff must prove dishonor, a protest for non-acceptance or non-pay-

<sup>22</sup> *Dubois v. Mason*, 127 Mass. 37.

<sup>23</sup> *Reed v. Wilson*, 12 Va. 29; *Lucas v. Ladew*, 28 Mo. 342.

<sup>24</sup> *Lockett v. Howze*, 18 Ala. 613; *Rushworth v. Moore*, 36 N. H. 188; *Crane v. Trudeau*, 19 La. Ann. 307; *Mudd v. Harper*, 1 Md. 110, 54 Am. Dec. 644.

<sup>25</sup> *Neg. Inst. Law*, §§ 240, 241; *Schuchardt v. Hall*, 36 Md. 590, 11 Am. Rep. 514; *Sharpe v. Drew*, 9 Ind. 281.

<sup>26</sup> *Leonard v. Olson*, 99 Ia. 162,

68 N. W. 677, 61 Am. St. Rep. 230, 35 L. R. A. 381; *Hamer v. Brainerd*, 7 Utah 245, 26 Pac. 299, 12 L. R. A. 434.

<sup>27</sup> *Aldine Mfg. Co. v. Warner*, 96 Ga. 370, 23 S. E. 404; *Stix v. Mathews*, 63 Mo. 371; *Beale v. Parry*, 20 N. Y. 407, 75 Am. Dec. 114.

<sup>28</sup> *Homes v. Smith*, 16 Me. 181; *Bell v. Perkins (Peck)*, Tenn. 261, 14 Am. Dec. 745; *Wilmington Bank v. Cooper*, 1 Harr. (Del.) 10.

<sup>29</sup> *Gawtry v. Doane*, 51 N. Y. 84.

ment. This is done by introducing the statement made out by the notary.<sup>30</sup>

The official seal of the notary attached to the certificate of protest is everywhere received as a sufficient *prima facie* proof of its authenticity. The courts take judicial notice of the seal, and it proves itself by its appearance upon the certificate. But it may be controverted as false, fictitious, or improperly annexed.<sup>31</sup>

**§ 319. Evidence of defendant.** After the plaintiff has produced the testimony necessary to establish his case, the defendant then introduces his testimony. This testimony in defense on a bill, note or check, is governed by the rules as applied to ordinary contracts between the purchaser for value and prior parties. If the defense is a real defense the question is solely whether the defense does exist, and any evidence tending to prove such fact is admissible. If the real defense does exist, the plaintiff cannot recover against one who has that defense.<sup>32</sup> Where it is a question of a personal defense, there are two classes of cases:

1. Where the defense shows lack of consideration, or release, or payment of a bill or note.
2. Where the defense shows fraud, duress, or illegality in the inception of the instrument.

In the first class it is not so much the question of wrong doing as merely a question of lack or failure of consideration, and where there is a lack or failure of consideration, the first thing to be proved by the defendant is that the plaintiff had notice of the fact that there was a want of consideration or failure of consideration. He does not prove that there was a failure of consideration, but notice and after that he proves the facts of want or failure of consideration. In the other cases, that is, those of fraud or illegality, the defendant does not prove notice but proves the fraud or illegality, itself. And when the fraud or illegality is proved the presumption of notice arises without any proof of notice and the burden of proof is on the plaintiff to prove he did not have notice.<sup>33</sup> When a plea of tender is made

<sup>30</sup> Clough v. Holden, 115 Mo. 336, 21 S. W. 1071, 37 Am. St. Rep. 393; Rosson v. Carroll, 90 Tenn. 90, 16 S. W. 66, 12 L. R. A. 727; Kellam v. McKoon, 31 Hun (N. Y.) 519.

<sup>31</sup> Pierce v. Indseth, 106 U. S. 546, 27 L. Ed. 254; Nichols v. Webb, 8 Wheat. 326; Bradley v. Northern Bank, 60 Ala. 258.

<sup>32</sup> As to real and personal defenses see *supra*, Chaps. 13 and 14.

<sup>33</sup> Alabama Nat. Bank v. Halsey, 109 Ala. 196, 19 So. 522; Woodward v. Rodgers, 31 Ia. 342; Capitol etc. Co. v. Montpelier etc. Co., (Vt. 1905), 59 Atl. 827.

it must be pleaded with a profer<sup>t</sup> of the money.<sup>34</sup> To constitute a legal tender, money must have been offered and the offer must have been absolute and unconditional.

The Negotiable Instruments Law provides:

*"Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title."*<sup>34a</sup>

§ 320. **The argument.** As the next step each party may in person or by his attorney, address the jury and the court in support of his side of the controversy. Usually the plaintiff makes the first address and in it he points out the evidence he has produced which shows or tends to show why he should recover on the bill, note or check. The defendant follows the plaintiff with his address or argument showing why from the evidence there should not be recovery by the plaintiff. After this the plaintiff has the right to close the discussion.<sup>35</sup>

§ 321. **The charge, verdict and judgment.** At the close of the argument, the judge instructs the jury on the law of the case,<sup>36</sup> after which the jury retire and decide whether the plaintiff or defendant is entitled to a verdict. Upon the verdict returned by the jury the court renders a judgment.

<sup>34</sup> Caldwell v. Cassidy, 8 Cow. 271; Adams v. Hackensack Co., 15 Vroom 638.

<sup>34a</sup> Neg. Inst. Law, § 59.

<sup>35</sup> Pate v. Aurora First Nat. Bank, 63 Ind. 254; Kenny v. Lynch, 61 N. Y. 654; Slauson v. Englehart,

34 Barb. (N. Y.) 198. But see Kent v. Mason, 79 Ill. 540.

<sup>36</sup> Pottle v. Thomas, 12 Conn. 565; Wolf v. Troxell, 94 Mich. 573, 54 N. W. 838; Galloway v. Hicks, 26 Nebr. 531, 42 N. W. 709.

### **PART III.**

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## **NEGOTIABLE INSTRUMENTS LAW ANNOTATED**

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### **INTRODUCTION.**

The Negotiable Instruments Law is the name given to the statute which contains within narrow compass all the fundamental principles and essential definitions of the law of negotiable instruments or commercial paper. It provides one standard for such instruments as to their formal requisites of negotiability; and it provides a uniform rule as to methods of their transfer, as to the rights of the holder and as to the liabilities of the parties. It is the result of a concerted effort to have the legislatures of the States to harmonize and make uniform the rules and principles governing the use of such instruments in the different states throughout the United States because it was realized that commercial paper does over 90% of the work of paying for and effecting the exchange of interstate commerce. Such uniformity could not be secured without codification; so this law is a codification of existing laws, that is, a codification of laws which were scattered through some ten thousand reported cases, and hundreds of statutory enactments. In other words, it is a codification of the common law of negotiable instruments clearly and concisely condensed into less than two hundred sections and contained in less than thirty-five pages. In this law the disputed points and variant laws, whose discussion occupies so large a share of two and three volumed treatises on the subject, are decided and harmonized. The law is in the main declaratory in its effect but makes a few changes; it necessarily changes the law in some jurisdictions on points concerning which a conflict of laws has existed; but it may safely be said that there is not an important provision in the act which is not supported by some well considered decision of an American court



of high authority or by some American statute which has been tested and proved by experience.

The easiest and best manner to have had such an uniform law throughout the United States would have been to have had the Congress of the United States to have enacted it as a Federal statute, but the Supreme Court of the United States in 1868, held that contracts (and, in consequence, negotiable instruments), between the states, did not constitute interstate commerce. From this decision the lawyers have concurred in the view that a Federal law regulating negotiable instruments, or commercial paper would be unconstitutional. Thus it became necessary in order to bring about uniformity that the different states should unite on the same law and enact it separately.

Most of the continental countries have codified the law of negotiable instruments. The French code was enacted about a century ago, and no substantial alteration has been made in it by subsequent legislation. The German General Exchange Law was adopted in 1849, and slightly modified in 1869. Other continental codes modeled upon one or the other of the above codes (but usually in later years modeled on the German code) have been adopted.

In the common law countries the first attempt at a codification was a digest of the laws of bills of exchange by Judge Chambers, of England, published in 1878, after a review by him of over 2,500 cases then reported in the English courts dealing with the subject of bills of exchange. In 1880, the Institute of Bankers and the Associated Chambers of Commerce instructed Judge Chambers to prepare a bill on the subject. He did so, putting into a few words the results of the decisions of the courts for three hundred years. This bill was introduced in Parliament and adopted practically as presented. It has been in force since that time and is known as the "English Bill of Exchange Act of 1882" and has thus operated successfully for forty years. It has been adopted by practically all of the various colonies and dependencies of the British Empire.

In the United States there was, prior to the drafting of the Negotiable Instruments Law, a codification of the law in some states but there was nothing looking toward a codification for all the states of the Union. The earliest codification for an individual state, in a strict sense, is found in the California Code of 1872.

The history of the act looking to a uniformity of laws in all the states dates back to several years ago. Then, at the request of the American Bar Association and through its co-operation, acts

were passed in many states providing for the appointment by the governor of "Commissions for the Promotion of Uniformity of Legislation in the United States." It was provided that these should meet in joint conference, frame and adopt statutes which they would recommend to their respective Legislatures for all of the states and thus endeavor to eliminate as much as possible the confusing conflict in the commonest principles and provisions of private law. At a conference of commissioners from nineteen states, held in 1895, a resolution was adopted requesting the committee on commercial laws to procure a draft of a bill relating to commercial paper, based on the English Bill of Exchange Act, and on such other sources of information as the committee might deem proper to consult and to prepare a codification of the law relating to bills and notes. The matter, as stated by Mr. John J. Crawford, was referred to a sub-committee consisting of Lyman D. Brewster, of Connecticut; Henry C. Willcox, of New York, and Frank Bergen, of New Jersey; and Mr. Crawford was employed by the sub-committee to draw the proposed law. In drafting this law when the decisions of the state courts were conflicting the rules of the Supreme Court of the United States were adopted and the decisions of that high tribunal were followed. When completed the draft was submitted to the sub-committee who printed it and sent copies to each member of the conference, and also to many prominent lawyers and law professors and to several English judges and lawyers, with an invitation for suggestions and criticisms. The draft was submitted to the conference which met at Saratoga in August, 1896; and the commissioners who were in attendance, being twenty-seven in all, and representing fourteen different states, in a session of three days by the entire conference went over it section by section, and made amendments therein. The draft as thus amended was adopted by the conference and recommended for general enactment by the state Legislatures. It also met with the approval of the American Bar Association, and in such form was unanimously recommended by said association to the Legislatures of the several states and territories of the Union for adoption.

The law is the result of two purposes; the first and chief purpose was to produce uniformity in the laws of the different states upon this important subject, so that the citizens of each state might know the rules which would be applied to their notes, checks and other negotiable paper in every other state in which the law was enacted, since it was an absolute impossibility for the commercial purchaser in any state to know all the details affecting the negotiability of paper governed by the laws of all

the other states. The second purpose was to preserve the law as nearly as possible as it then existed. And it may be said probably without question that in the enactment of this statute no essential feature of the law of negotiable instruments as theretofore determined has been eliminated. While the bill is simple and intelligible in its expression, great care was taken to preserve the use of words which had had repeated legal constructions and had become recognized terms in the law merchant.

New York was the first state to enact the law. The law is now in force in all the states and territories of the Union except Georgia. The bill has been introduced annually in the Legislature of Georgia for years but has failed to pass.

Before the enactment of the law in any states the situation induced by conflicting decisions and statutes embarrassed business and interrupted the free circulation of commercial paper. What was a promissory note in one State was a simple contract in another; what was an indorsement in one jurisdiction was only an assignment in another; in some States a note was not negotiable unless the words "Value received" were written in the body of the note, while in others such words were unnecessary; some jurisdictions permitted exchange to be added while others held that such addition made the note non-negotiable; days of grace were permitted in one State and not in another; what was a contract of an indorser in one State was a contract of a maker in another, or of a guarantor or maker in still another, as oral proof of the circumstances attending the making of the contract might determine; and there were other similar conflicts.

So long as trade and commerce were mainly confined to transactions between the citizens of a single State within its own borders, the State regulations operated fairly well and it did not matter materially that the laws of one State differed from those of another upon these subjects. But now the country has outgrown such conditions and in innumerable cases more business is done by the people or corporations of a State with the people of other States than with their own, and commercial paper is almost universally the medium of exchange in these transactions. As our commercial activity is ever expanding and as interstate commerce has assumed such vast proportions, the necessity becomes imperative that the commercial currency of payment shall be uniform, and not variable, in its essential characteristics. The enactment of the law has tended to facilitate trade between the States, and make the transactions of business less complicated and more certain and sure, as whatever legislation tends to sustain credit helps commerce. The law of negotiable instruments

affects all classes of merchants throughout the country since, as has been pointed out, negotiable instruments are the medium for the payment and settlement of 90% of all trade transactions.

The law has had the test of twenty-five years' experience and the testimony is all one way as to its efficiency. It should be realized that a statute, which has been adopted after due deliberation by so many legislative bodies and adopted by the Congress of the United States, must exercise a beneficial influence on all and be productive of good results.

## THE NEGOTIABLE INSTRUMENTS LAW.

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Below is given a list of the States and Territories where the Negotiable Instruments Law has been enacted:

- Alabama—Laws 1907, Chap. 722, in effect Jan. 1, 1908.  
Alaska—Laws 1913, Chap. 64, approved April 28, 1913.  
Arizona—Rev. Stat. 1901, p. 852, in effect Sept. 1, 1901.  
Arkansas—Acts 1913, No. 81, approved Feb. 21, 1913.  
California—Laws 1917, Chap. 751, p. 1531, in effect July 31, 1917.  
Colorado—Laws 1897, Chap. 64, approved April 20, 1897.  
Connecticut—Laws 1897, Chap. 74, approved April 5, 1897.  
Delaware—Laws of 1911, Chap. 191, approved April 4, 1911.  
District of Columbia—Laws U. S. 1899, in effect April 3, 1899.  
Florida—Laws 1897, Chap. 4524, approved June 1, 1897.  
Hawaii—Laws 1907, Act 89, in effect April 20, 1907.  
Idaho—Laws 1903, p. 380, in effect March 10, 1903.  
Illinois—Laws 1907, p. 403, approved June 5, 1907.  
Indiana—Acts 1913, Chap. 63, in effect April 30, 1913.  
Iowa—Laws 1902, Chap. 130, approved April 12, 1902.  
Kansas—Laws 1905, Chap. 310, in effect June 8, 1905.  
Kentucky—Laws 1904, Chap. 102, approved March 24, 1904.  
Louisiana—Laws 1904, Chap. 64, approved June 29, 1904.  
Maine—Laws 1917, Chap. 257, approved April 7, 1917.  
Maryland—Laws 1898, Chap. 119, approved March 29, 1898.  
Massachusetts—Laws 1898, Chap. 533, in effect Jan. 1, 1899.  
Michigan—Laws 1905, Chap. 265, approved June 16, 1905.  
Minnesota—Laws 1913, Chap. 272, in effect July 1, 1913.  
Mississippi—Laws 1916, Chap. 244, p. 355, in effect July 7, 1916.  
Missouri—Laws 1905, p. 243, approved April 10, 1905, in effect June 16, 1905.  
Montana—Laws 1903, Chap. 121, in effect March 7, 1903.  
Nebraska—Laws 1905, Chap. 83, in effect August 1, 1905.  
Nevada—Laws 1907, Chap. 62, in effect May 1, 1907.  
New Hampshire—Laws 1909, in effect January 1, 1910.  
New Jersey—Laws 1902, Chap. 184, p. 283, approved April 4, 1902.  
New Mexico—Laws 1907, Chap. 83, approved March 21, 1907.  
New York—Laws 1897, Chap. 612, became a law May 19, 1897.

- North Carolina—Laws 1899, Chap. 733, in effect March 8, 1899.  
North Dakota—Laws 1899, Chap. 113, approved March 7, 1899.  
Ohio—Laws 1902, p. 162, in effect January 1, 1903.  
Oklahoma—Laws 1909, in effect June 10, 1909.  
Oregon—Laws 1899, p. 18, approved February 16, 1899.  
Pennsylvania—Laws 1901, No. 162, in effect September 2, 1901.  
Philippine Islands—Acts of Philippine Commission 1911, No. 2031, enacted Feb. 3, 1911, in effect 90 days after publication.  
Rhode Island—Laws 1899, Chap. 674, in effect July 1, 1899.  
South Carolina—Acts 1914, Act 396, p. 668 (in effect March, 1914?).  
South Dakota—Compiled Laws 1913, Chap. 279, approved March 4, 1913.  
Tennessee—Laws 1899, Chap. 94, in effect May 16, 1899.  
Texas—General Laws 1919, p. 190, in effect June 17, 1919.  
Utah—Laws 1899, Chap. 83, in effect July 1, 1899.  
Vermont—Laws of 1912, Act 99, in effect June 1, 1913.  
Virginia—Laws 1898, Chap. 866, approved March 3, 1898.  
Washington—Laws 1899, Chap. 149, in effect March 22, 1899.  
West Virginia—Laws 1907, Chap. 81, in effect January 1, 1908.  
Wisconsin—Laws 1899, Chap. 356, in effect May 15, 1899.  
Wyoming—Laws 1905, Chap. 43, in effect February 15, 1905.

TABLE SHOWING THE CORRESPONDING SECTIONS  
OF THE STATUTES IN THE DIFFERENT STATES  
AND TERRITORIES.

Uniform Act Commission	No.	Ala.	Alaska	Ariz.	Ark.	Cal.	Colo.	Conn.	Del
	1-23	4958-4980	1-23	4146-4168	7767-7790	3082-3104	5051-5073	4359-4381	2645-2667
	24-29	4981-4984	24-29	4169-4174	7791-7796	3105-3110	5074-5079	4382-4387	2668-2673
	30-50	4985-5005	30-50	4175-4195	7797-7817	3111-3131	5080-5100	4388-4408	2674-2694
	51-59	5006-5014	51-59	4196-4204	7818-7826	3132-3140	5101-5109	4409-4417	2695-2703
	60-69	5015-5024	60-69	4205-5214	7827-7836	3141-3150	5110-5119	4418-4427	2704-2713
	70-88	5025-5042	70-88	4215-4233	7837-7855	3151-3169	5120-5138	4428-4446	2714-2732
	89-118	5043-5067	89-118	4234-4263	7856-7885	3170-3199	5139-5168	4447-4476	2733-2762
	119-125	5068-5074	119-125	4264-4270	7886-7892	3200-3206	5169-5175	4477-4483	2763-2769
	126-131	5075-5080	126-131	4271-4276	7893-7898	3207-3212	5176-5181	4484-4489	2770-2775
	132-142	5081-5091	132-142	4277-4287	7899-7909	3213-3223	5182-5192	4490-4500	2776-2786
	143-151	5092-5099	143-151	4288-4296	7910-7918	3224-3232	5193-5201	4501-4509	2787-2795
	152-160	5100-5108	152-160	4297-4305	7919-7927	3233-3241	5202-5210	4510-4518	2796-2804
	161-170	5109-5118	161-170	4306-4315	7928-7937	3242-3251	5211-5220	4519-4528	2805-2814
	171-177	5119-5124	171-177	4316-4322	7938-3944	3252-3258	5221-5227	4529-4535	2815-2821
	178-183	5125-5130	178-183	4323-4328	3945-3950	3259-3264	5228-5233	4536-4541	2822-2827
	184-189	5131-5036	184-189	4329-4334	3951-3956	3265-3265e	5234-5239	4542-4547	2828-2833
	190-196	5037-5043	190-196	4335-4339	7760-7766	3266-3266d	5240-5246	4358	2834-2840

Uniform Act Commission	No.	D. C.	Fla.	Haw.	Idaho	Illinois	Indiana	Iowa
	1-23	1305-1327	4675-4698	3451-3473	5868-5891	7640-7663	9089a-9089w	3060u1-23
	24-29	1328-1333	4699-4704	3474-3479	5892-5897	7664-7669	9089x-9089c1	24-29
	30-50	1334-1354	4705-4724	3480-3500	5898-5918	7670-7690	9089d1-9089x1	30-50
	51-59	1355-1363	4725-4733	3501-3509	5919-5927	7691-7699	9089y1-9089g2	51-59
	60-69	1364-1373	4734-4743	3510-3519	5928-5937	7700-7709	9089h2-9089q2	60-69
	70-88	1374-1392	4744-4760	3520-3538	5938-5946	7710-7727	9089r2-9089j3	70-88
	89-118	1393-1422	4761-4782	3539-3568	5947-5976	7728-7757	9089k3-9089n4	89-118
	119-125	1423-1429	4783-4787	3569-3575	5977-5983	7758-7764	9089o4-9089u4	119-125
	126-131	1430-1435	4788-4791	3576-3581	5984-5989	7765-7770	9089v4-9089a5	126-131
	132-142	1436-1446	4792-4798	3582-3592	5990-5997	7771-7780	9089b5-9089i5	132-142
	143-151	1447-1455	4799-4805	3593-3601	5998-6006	7781-1789	9089m5-9089u5	143-151
	152-160	1456-1464	4806-4812	3602-3610	6007-6015	7790-7798	9089v5-9089d6	152-160
	161-170	1465-1474	4813-4821	3611-3620	6016-6025	7799-7808	9089e6-9089n6	161-170
	171-177	1475-1481	4822-4826	3621-3627	6026-6032	7809-7815	9089o6-9089u6	171-177
	178-183	1482-1487	4827-4832	3628-3633	6033-6038	7816-7821	9089v6-9089a7	178-183
	184-189	1488-1493	4833-4838	3634-3639	6039-6044	7822-7827	9089b7-9089g7	184-189
	190-196	1304	4674	3640-3646	6045-6051	7828-7835	9089h7-9089n7	190-196



Uniform Act Commission No.	Kansas	Kentucky	Louisiana	Maine	Md.	Mass.	Mich.
1-23	6528-6550	1-23	1-23	1-23	20-42	18-40	3-25
24-29	6551-6556	24-29	24-29	24-29	43-48	41-46	26-31
30-50	6557-6577	30-50	30-50	30-50	49-69	47-67	32-52
51-59	6578-6586	51-59	51-59	51-59	70-78	68-76	53-61
60-69	6587-6596	60-69	60-69	60-69	79-88	77-86	62-71
70-88	6597-6616	70-88	70-88	70-88	89-107	87-105	72-90
89-118	6617-6646	89-118	89-118	89-118	108-137	106-135	91-120
119-125	6647-6653	119-125	119-125	119-125	138-144	136-142	121-127
126-131	6654-6659	126-131	126-131	126-131	145-150	143-148	128-133
132-142	6660-6670	132-142	132-142	132-142	151-161	149-159	134-144
143-151	6671-6679	143-151	143-151	143-151	162-170	160-168	145-153
152-160	6680-6688	152-160	152-160	152-160	171-179	169-177	154-162
161-170	6689-6698	161-170	161-170	161-170	180-189	178-187	163-172
171-177	6699-6705	171-177	171-177	171-177	190-196	188-194	173-179
178-183	6706-6711	178-183	178-183	178-183	197-202	195-200	180-185
184-189	6712-6717	184-189	184-189	184-189	203-208	201-206	186-191
190-196	6521-6527	190-196	190-196	190-196	13-19	207-212	1-2

Uniform Act Commission							
No.	Minn.	Miss.	Mo.	Mont.	Neb.	Nev.	N. H.
1-23	5813-5835	2579-2601	788-810	5849-5871	5319-5341	2548-2570	1-23
24-29	5836-5841	2602-2607	811-816	5872-5877	5342-5347	2571-2576	24-29
30-50	5842-5862	2608-2628	817-836	5878-5898	5348-5368	2577-2597	30-50
51-59	5863-5871	2629-2637	837-845	5899-5907	5369-5377	2598-2606	51-59
60-69	5872-5881	2638-2647	846-855	5908-5917	5378-5387	2607-2616	60-69
70-88	5882-5900	2648-2666	856-874	5918-5936	5388-5405	2617-2635	70-88
89-118	5901-5930	2667-2696	875-904	5937-5966	5406-5435	2636-2665	89-118
119-125	4931-5937	2697-2703	905-911	5967-5973	5436-5442	2666-2672	119-125
126-131	5938-5943	2704-2709	912-917	5974-5979	5443-5448	2673-2678	126-131
132-142	5944-5954	2710-2720	918-928	5980-5990	5449-5459	2679-2689	132-142
143-151	5955-5963	2721-2729	929-937	5991-5999	5460-5468	2690-2698	143-151
152-160	5964-5972	2730-2738	938-946	6000-6008	5469-5477	2699-2707	152-160
161-170	5973-5982	2739-2748	947-956	6009-6018	5478-5487	2708-2717	161-170
171-177	5983-5989	2749-2755	957-963	6019-6025	5488-5494	2718-2724	171-177
178-183	5990-5995	2756-2761	964-969	6026-6031	5495-5500	2725-2730	178-183
184-189	5996-6001	2762-2767	970-975	6032-6037	5501-5506	2731-2736	184-189
190-196	6002-6008	2768-2774	975-982	5482-5848	5507-5511	2737-2743	190-196

Uniform Act Commission	No.	N. J.	N. Mex.	N. Y.	N. C.	N. D.	Ohio	Okla.
	1-23	1-23	589-611	20-42	2151-2171	6886-6908	8106-8128	4051-4073
	24-24	24-29	612-617	50-55	2172-2177	6909-6914	8129-8134	4074-4079
	30-50	30-50	618-638	60-80	2178-2199	6915-6935	8135-8155	4080-4100
	51-59	51-59	639-647	90-98	2200-2208	6936-6944	8156-8164	4101-4109
	60-69	60-69	648-657	110-119	2209-2218	6945-6954	8165-8174	4110-4119
	70-88	70-88	658-676	130-148	2219-2238	6955-6973	8175-8193	4120-4138
	89-118	89-118	677-706	160-189	2239-2268	6974-7003	8194-8223	4139-4168
	119-125	119-125	707-713	200-206	2269-2275	7004-7010	8224-8230	4169-4175
	126-131	126-131	714-719	210-215	2276-2281	7011-7016	8231-8236	4176-4181
	132-142	132-142	720-730	220-230	2282-2292	7017-7027	8237-8247	4182-4192
	143-151	143-151	731-739	240-248	2293-2301	7028-7035	8248-8256	4193-4201
	152-160	152-160	740-748	260-268	2302-2310	7036-7044	8257-8265	4202-4210
	161-170	161-170	749-758	280-289	2311-2320	7045-7054	8266-8275	4211-4220
	171-177	171-177	759-765	300-306	2321-2327	7055-7061	8276-8282	4221-4227
	178-183	178-183	766-771	310-315	2328-2333	7062-7067	8283-8288	4228-4233
	184-189	184-189	772-777	320-325	2334-2339	7068-7073	8289-8294	4234-4239
	190-196	190-196	778-784	1-7	2340-2344	7074-7080	8295-8300	4044-4050

Uniform Act Commission	No.	Ore.	Pa.	Phil. Is.	R. I.	S. C.	S. D.	Tennessee
	1-23	5834-5856	1-30	1-23	7-29	1-23	1705-1727	3516a-3516a22
	24-29	5857-5862	32-37	24-29	30-35	24-29	1728-1733	3516a23-3516a30
	30-50	5863-5883	38-59	30-50	36-56	30-50	1734-1754	3516a31-3516a51
	51-59	5884-5892	60-68	51-59	57-65	51-59	1755-1763	3516a52-3516a60
	60-69	5893-5902	69-78	60-69	66-75	60-69	1764-1773	3516a61-3516a70
	70-88	5903-5921	79-97	70-88	76-94	70-88	1774-1792	3516a71-3516a89
	89-118	5922-5951	104-133	89-118	95-124	89-118	1793-1822	3516a90-3516a119
	119-125	5952-5958	134-141	119-125	125-131	119-125	1823-1829	3516a120-3516a126
	126-131	5959-5964	142-147	126-131	132-137	126-131	1830-1835	3516a127-3516a132
	132-142	5965-5975	148-159	132-142	138-148	132-142	1836-1846	3516a133-3516a143
	143-151	5976-5984	160-168	143-151	149-157	143-151	1847-1855	3516a144-3516a152
	152-160	5985-5993	169-178	152-160	158-166	152-160	1856-1864	3516a153-3516a161
	161-170	5994-6003	181-190	161-170	167-176	161-170	1865-1874	3516a162-3516a171
	171-177	6004-6010	191-197	171-177	177-183	171-177	1875-1881	3516a172-3516a178
	178-183	6011-6016	198-203	178-183	184-189	178-183	1882-1887	3516a179-3516a184
	184-189	6017-6022	204-210	184-189	190-195	184-189	1888-1892	3516a185-3516a190
	190-196	6023-6025	211-220	190-196	1-6	190-196	1893-1897	3516a191-3516a196

Uniform Act Commission	Texas	Utah.	Vt.	Va.	Wash.	W. Va.
No.						
1-23	6001a1-6001a23	4030-4053	1-23	5563-5585	3392-3414	4172-4194
24-29	6001a24-6001a29	4054-4059	24-29	5586-5591	3415-3420	4195-4200
30-50	2001a30-2001a50	4060-4080	30-50	5592-5612	3421-3441	4201-4221
51-59	2001a51-2001a59	4081-4089	51-59	5613-5621	3442-3450	4222-4230
60-69	2001a60-2001a69	4090-4100	60-69	5622-5631	3451-3460	4231-4240
70-88	2001a70-2001a88	4101-4120	70-88	5632-5650	3461-3478	4241-4259
89-118	2001a89-2001a118	4121-4150	89-118	5651-5680	3479-3508	4260-4289
119-125	2001a119-2001a125	4151-4157	119-125	5681-5687	3509-3515	4290-4296
126-131	2001a126-2001a131	4158-4163	126-131	5688-5693	3516-3521	4297-4302
132-142	2001a132-2001a142	4164-4174	132-142	5694-5704	3522-3532	4303-4313
143-151	2001a143-2001a151	4175-4183	143-151	5705-5713	3533-3541	4314-4322
152-160	2001a152-2001a160	4184-4192	152-160	5714-5722	3542-3550	4323-4331
161-170	*2001a161-2001a170	4193-4202	161-170	5723-5732	3551-3560	4332-4341
171-177	2001a172-2001a177	4203-4210	171-177	5733-5739	3561-3567	4342-4348
178-183	2001a178-2001a183	4211-4216	178-183	5740-5745	3568-3573	4349-4354
184-189	2001a184-2001a189	4217-4222	184-189	5746-5751	3574-3579	4355-4360
190-196	2001a190-2001a197	4223-4229	190-196	5752-5758	3580-3586	4361-4368

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**Uniform Act  
Commission**

<b>No.</b>	<b>Wisconsin</b>	<b>Wyoming</b>
<b>1-23</b>	1675-1-1675-23	3934-3956
<b>24-29</b>	1675-50-1675-55	3957-3962
<b>30-50</b>	1676-1676-20	3963-3984
<b>51-59</b>	1676-21-1676-29	3985-3993
<b>60-69</b>	1677-1677-9	3994-4003
<b>70-88</b>	1678-1678-18	4004-4022
<b>89-118</b>	1678-19-1678-48	4023-4352
<b>119-125</b>	1679-1679-6	4353-4359
<b>126-131</b>	1680-1680e	4360-4365
<b>132-142</b>	1680-f-1680p	4366-4376
<b>143-151</b>	1681-1681-8	4377-4385
<b>152-160</b>	1681-9-1681-17	4386-4394
<b>161-170</b>	1681-18-1681-27	4395-4404
<b>171-177</b>	1681-28-1681-34	4405-4411
<b>178-183</b>	1681-35-1681-40	4412-4417
<b>184-189</b>	1684-1684-5	4418-4423
<b>190-196</b>	1675	4424-4430

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## THE NEGOTIABLE INSTRUMENTS LAW.

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### Article

1. Form and Interpretation of Negotiable Instruments. (§§ 1-23.)
- II. Consideration. (§§ 24-49.)
- III. Negotiation. (§§ 30-50.)
- IV. Rights of Holder. (§§ 51-59.)
- V. Liabilities of Parties. (§§ 60-69.)
- VI. Presentment for Payment. (§§ 70-88.)
- VII. Notice of Dishonor. (§§ 89-118.)
- VIII. Discharge of Negotiable Instruments. (§§ 119-125.)
- IX. Bills of Exchange—Form and Interpretation. (§§ 126-131.)
- X. Acceptance. (§§ 132-142.)
- XI. Presentment for Acceptance. (§§ 143-151.)
- XII. Protest. (§§ 152-160.)
- XIII. Acceptance for Honor. (§§ 161-170.)
- XIV. Payment for Honor. (§§ 171-177.)
- XV. Bills in a Set. (§§ 178-183.)
- XVI. Promissory Notes and Checks. (§§ 184-189.)
- XVII. General Provisions. (§§ 190-196.)

## ARTICLE I.

### FORM AND INTERPRETATION.

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|--|---|
| <p>§ 1. Form of negotiable instrument.</p> <p>2. Certainty as to sum; what constitutes.</p> <p>3. When promise is unconditional.</p> <p>4. Determinable future time; what constitutes.</p> <p>5. Additional provisions not affecting negotiability.</p> <p>6. Omissions; seal; particular money.</p> <p>7. When payable on demand.</p> <p>8. When payable to order.</p> <p>9. When payable to bearer.</p> <p>10. Terms, when sufficient.</p> <p>11. Date, presumption as to.</p> <p>12. Ante-dated and post-dated.</p> <p>13. When date may be inserted.</p> | <p>§ 14. Blanks, when may be filled.</p> <p>15. Incomplete instrument not delivered.</p> <p>16. Delivery; when effectual; when presumed.</p> <p>17. Construction where instrument is ambiguous.</p> <p>18. Liability of persons signing in trade or assumed name.</p> <p>19. Signature by agent; authority; how shown.</p> <p>20. Liability of person signing as agent, etc.</p> <p>21. Signature by procuration; effect of.</p> <p>22. Effect of indorsement by infant or corporation.</p> <p>23. Forged signature; effect of.</p> |
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Sections 1 to 23 above are the sections used by the commissioners.

See table of corresponding sections of the Law in the various states and territories beginning on page 360.

**§ 1 Form of negotiable instrument.** An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer.
2. Must contain an unconditional promise or order to pay a sum certain in money.
3. Must be payable on demand, or at a fixed or determinable future time.
4. Must be payable to order or to bearer.
5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. <sup>1. 1a</sup>

See text, § 40.

Cross sections: 191 "written," 3, 2, 7, 126, 9, 4, 56, 184, 123, 137, 8, 6, 131.

The Michigan Act says: "Certain sum" instead of "sum certain."



The Arizona, Idaho, Iowa, Kentucky, North Carolina and Wyoming acts read: "Must be payable to the order of a specified person or to bearer," instead of as in sub-division 4 above.

The Wisconsin act (No. 1675-1) adds: "But no order drawn upon or accepted by the treasurer of any county, town, city, village or school district, whether drawn by any officer thereof or any other person, and no obligation nor instrument made by any such corporation or any officer thereof, unless expressly authorized by law to be made negotiable, shall be, or shall be deemed to be, negotiable according to the custom of merchants, in whatever form they may be drawn or made. Warehouse receipts, bills of lading and railroad receipts upon the face of which the words 'not negotiable' shall not be plainly written, printed or stamped, shall be negotiable as provided in section 1676 of the Wisconsin Statutes of 1878, and in sections 4194 and 4425 of these statutes, as the same have been construed by the supreme court."

1. Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Plaintiff must allege the negotiability of note before recovery can be had. *Whateley v. Muscogee Bank (Ala.)*, 72 So. 1018.

Plaintiff must allege note payable to bearer or order either in complaint or replication in order to recover. *Oneonta Trust & Banking Co. v. Box (Ala.)*, 73 So. 759.

When negotiability of note must be set up. *Jones v. Martin (Ala. App.)*, 74 So. 761.

Certificates of deposit are negotiable when payable upon return or surrender properly indorsed. *Johnson v. Blackman (Ala.)*, 78 So. 891.

Note containing provision for reimbursing payee is non-negotiable. *Sacred Heart Church Building Committee v. Manson*, — Ala. —, 82 So. 498.

Estopped to deny valid delivery when notes allowed to get into circulation. *Cannon v. Dillehay*, — Ala. App. —, 84 So. 549.

Written order to individual requesting payment of sum certain is not negotiable instrument. *Ex parte E. C. Payne Lumber Co.*, 203 Ala. 668.

Signature on note by mark. *Smith v. Vaughn*, — Ala. App.—, 89 So. 302.

Instrument payable from specific fund not negotiable if fund is insufficient. *Rector v. Strauss*, — Ark. —, 203 S. W. 1024.

Stipulation as to principal and interest being due upon default does not render note uncertain. *Arnett v. Clack*, — Ariz. —, 198 P. 127.

The clause "or what may be due on my deposit book" makes conditional the direction to pay A. or order \$300.00. *National Sav. Bank v. Cable*, 73 Conn. 568, 48 Atl. 428.

Note not made payable on demand or fixed date is not negotiable. *Sanderson v. Clark*, — Ida. —, 194 P. 472.

Effect of provision "the time of payment may be extended from time to time by any one or more of us without even the knowledge or consent of the other or others of us" upon negotiability. *Wayne County Nat. Bank v. Cook*, 127 N. E. 773, — Ind. App. —.

Agreement of payee to look to mortgage security for payment of note noted on back of the note makes it non-negotiable. *Allison v. Hollenbeak*, 138 Iowa 479, 114 N. W. 1059.

*New York*.—*Bennett v. Kisler* (1917), 163 N. Y. Supp. 555.

A contingency set out in a mortgage does not affect the negotiability of the note, but if the same were made a part of the note it would. *Des Moines Sav. Bank v. Arthur*, 163 Iowa 205, 143 N. W. 556, Ann. Cas. 1916C, 498.

A note providing for an extension of time pending outcome of a suit, but not exceeding a definite period, is negotiable. *Jewett Lumber Co. v. Martin Conroy Co.*, 171 Iowa 513, 152 N. W. 493.

Certificates of deposit are negotiable when made payable to order. *Kushner v. Abbott*, 156 Iowa 598, 137 N. W. 913.

A provision as to allowing taxes to become delinquent and making note due at an earlier date in a mortgage does not affect the negotiability of the note and would not if placed in note also, it being a definition of default of payment and authority to foreclose. *Lundean v. Hamilton* (Iowa), 159 N. W. 163.

Note not non-negotiable for uncertainty. *Commercial Sav. Bank v. Schaffer*, — Ia. —, 181 N. W. 492.

Waiver of presentment and notice of non-payment or extension of time as affecting negotiability. *Nat. Bank of Webb City, Mo. v. Dickinson*, 102 Kan. 564.

The words "to order" or "to bearer" or their equivalent must be used to make note negotiable. *Wettlaufer v. Baxter*, 137 Ky. 362, 125 S. W. 741, 26 L. R. A. (N. S.) 804.

Street improvement bonds, payable to bearer, are made negotiable by the statute under which issued. *Citizens' Trust, etc., Co. v. Hays*, 167 Ky. 560, 180 S. W. 811.

Necessary requirement for a negotiable instrument. *Lynchburg Shoe Co. v. Hensley*, — Ky. —, 218 S. W. 243.

An instrument directing the payment of a certain sum of money to a given person and reciting that it is "due Oct. 1st" is a bill of exchange payable on Oct. 1st. *Torpey v. Tebo*, 184 Mass. 307, 68 N. E. 223.

Where the drawee is directed, on acceptance, to pay to the order of the payee a sum in satisfaction of all claims, the instrument is conditional and non-negotiable and holds neither the drawer nor drawee. *Berenson v. London & Lancashire Fire Ins. Co.*, 201 Mass. 172, 87 N. E. 687.

Default of payment provisions in note does not render it uncertain as to time. *Schmidt v. Pegg*, 172 Mich. 159, 137 N. W. 524.

Note restraining title of goods in payee with default provision is not negotiable. *Polk County State Bank of Crookston v. Walters*, — Minn. —, 176 N. W. 496.

Certificates of deposit payable to order of payee are negotiable. *Dickey v. Adler*, 143 Mo. App. 326, 127 S. W. 593.

An installment note is not rendered non-negotiable by a provision for a discount if paid in fifteen days. *Farmers' Loan & Trust Co. v. Planck*, 98 Neb. 225, 152 N. W. 390, L. R. A. 1915E, 564.

Check payable one day after death of maker is valid if for consideration. *Keeler v. Hiles Estate*, — Neb. —, 172 N. W. 363.

A certificate of deposit is not negotiable which is payable to "A" or his assigns on return of this certificate. *Zander v. N. Y. Security & Trust Co.*, 39 Misc. R. 98, 78 N. Y. Supp. 900, affirmed 81 App. Div. 635, 81 N. Y. Supp. 1151, affirmed 178 N. Y. 208.

Additional words in a draft used to notify payee of the shipment of certain articles by certain method and that bill of lading went direct do not make it unconditional and non-negotiable. *Waddell v. Hanover Nat. Bank*, 48 Misc. R. 578, 97 N. Y. S. 305.

Any equivalent of the words "order" or "bearer" should be sufficient. *Fulton v. Varney*, 117 App. Div. 572, 575, 102 N. Y. Supp. 608.

A note to be paid when a certain contingency happens is non-negotiable. *Wray v. Miller*, 120 N. Y. Supp. 787.

Written portion of note controls and the words "not transferable" render non-negotiable a note otherwise negotiable. *Tanners' Nat. Bank v. Lacs*, 136 App. Div. 92, 120 N. Y. Supp. 669.

An instrument is not a promissory note which says, "Four months after date I promise to pay" a fixed sum and the transferor is not an indorser. *Hillborn v. Penn. Cement Co.*, 145 A. D. 442, 129 N. Y. Supp. 957.

A note is non-negotiable which provides that "this note is payable when Post Office Department accepts my building." *Devine v. Price*, 152 N. Y. Supp. 321.

A note providing for the same becoming due and payable upon the default of any of the provisions of a trust agreement was held to contain an absolute obligation to pay at maturity, there being no evidence that the agreement contained any postponement of the maturity of the note. *Osborne v. M., K. & T. Ry. Co.*, 92 Misc. Rep. 166, 155 N. Y. Supp. 236.

Allegation of execution of note for value received is not sufficient; must show that note was payable to order or bearer to be negotiable. *Martial Armand & Co. v. Creighton*, 167 N. Y. Supp. 333.

Provisions in bonds negotiable in form limiting liability to assets in hands of a trustee do not render the bonds or their coupons non-negotiable. *Hibbs v. Brown*, 190 N. Y. 167, 82 N. E. 1108.

Certificate of deposit providing for payment on return properly indorsed is negotiable instrument. *Nelson v. Citizens' Bank*, 180 N. Y. S. 747.

Note payable "—— after date, without grace," is negotiable demand note. *Keister v. Wade*, 182 N. Y. S. 119.

A note showing upon its face that it is for purchase of timber and that the title to the timber is retained as security as shown by the provisions of deed is conditional and not negotiable. *Pope v. Righter, etc., Lumber Co.*, 162 N. C. 206, 78 S. E. 65.

Where a line was drawn through the words "to the order" before signature and the line was afterwards erased the note was non-negotiable and proof of alteration and want of consideration should be admitted against a holder in due course. *Aamoth v. Hunter*, 33 N. D. 582, 157 N. W. 299.

Municipal warrants may be transferred by delivery or assignment, but are non-negotiable. *Logan County Bank v. Farmers' Nat. Bank*, 55 Okla. 592, 155 Pac. 561.

The rule under the law Merchant that a provision for discount if paid in fifteen days is not changed by Negotiable Instruments Law in Oklahoma, and the note is non-negotiable. *First Nat. Bank v. Watson (Ok.)*, 155 Pac. 1152.

Provisions in mortgage as affecting negotiability of note. *Westlake v. Cooper*, — Okla. —, 171 Pac. 859.

Provision for different rates of interest under several conditions affects promise to pay. *Union Nat. Bank of Massillon, Ohio v. Mayfield*, —Okla. —, 174 Pac. 1034.

Where a note by its provisions is subject to terms of mortgage which provides different modes of settlement the note is not negotiable. *Hull v. Angus*, 60 Ore. 95, 118 Pac. 284.

Mortgage provisions as to taxes do not govern negotiability of note. *Page v. Ford*, 65 Ore. 450, 131 Pac. 1013, Ann. Cas. 1915A, 1048, 45 L. R. A. (N. S.) 247.

Words "due if ranch is sold or mortgaged" do not render non-negotiable. *Nickell v. Bradshaw*, — Or. —, 183 P. 12.

Statutes making notes not payable to order or bearer are repealed by Negotiable Instruments Law. *Gilley v. Harrell*, 118 Tenn. 115, 101 S. W. 424.

Series notes do not become non-negotiable by reason of default provisions. *White v. Hatcher*, 135 Tenn. 609, 188 S. W. 61.

The Negotiable Instruments Law repealed former conflicting statutes. *Dobbins v. Carroll*, 137 Tenn. 133, 192 S. W. 166.

A provision for discount if paid within a specified time does not affect negotiability of note. *Farmers' Loan & Trust Co. v. Devear*, 2 Tenn. C. C. A. 366.

Contingencies in a mortgage securing a negotiable note do not change the negotiability of the note. *Barker v. Sartori*, 66 Wash. 260, 119 Pac. 611.

A note which on its face implies that the maker must pay taxes assessed is uncertain in amount and non-negotiable. *Bright v. Offield*, 81 Wash. 442, 143 Pac. 159.

Mortgage stipulations as to insurance, taxes and attorney's fees do not affect the negotiability of the note secured. *Moore & Co. v. Burling*, 93 Wash. 217, 160 Pac. 420.

Provision in a note for payment of taxes assessed upon same is non-negotiable. *Coolidge v. Saltmarsh* (Wash.), 165 Pac. 508.

Note where and when presented for payment. *Hastings v. Gump*, — W. Va. —, 108 S. E. 600.

Provisions in a mortgage securing a negotiable note for certain contingencies are not imported to the note. *Thorp v. Mindeman*, 123 Wis. 149, 101 N. W. 417, 68 L. R. A. 146, 107 Am. St. Rep. 1003.

Contract and notes given for purchase money should be construed together to determine negotiability. *Bank of Evansville v. Kurth*, 167 Wis. 43, 166 N. W. 658.

1a. The following is a complete list of the cases arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Ex parte Bledsoe* (1913), 61 So. 813; *Sherrill v. Merch. & Mech. Tr. & Sav. Bk.* (1916), 70 So. 723; *Wheateley v. Muscogee Bank* (Ala.), 72 So. 1018; *Oneonta Trust & Banking Co. v. Box* (1917), 73 So. 759; *Jones v. Martin* (Ala. App.), 74 So. 761; *Johnson v. Blackman* (1918), 78 So. 891; *Cannon v. Dillehay*, 84 So. 549; *Ex parte E. C. Payne Lumber Co.*, 203 Ala. 665; *Sacred Heart Church Building Committee v. Manson*, 82 So. 498; *Smith v. Vaughn*, 89 So. 302.

*Arizona*.—*Slaughter v. Bk. of Bisbee* (1916), 154 Pac. 1040; *Arnett v. Clack*, 198 Pac. 127;

*Arkansas*.—*Morgan v. Center* (1918), 202 S. W. 235; *Rector v. Strauss*, 203 S. W. 1024.

*California*.—*Navajo Co. Bk. v. Dolson* (1912), 126 Pac. 153; *Wetzel v. Cole* (1917), 165 Pac. 692; *Chinn v. Penn* (1919), 175 Pac. 687.

*Colorado*.—Norman v. McCarthy (1913), 138 Pac. 28; Ayers v. Walker (1913), 54 Col. 571; Johnson v. Engstone (1916), 155 Pac. 1095; Florence Oil & Refining Co. v. Hiawatha Gas, Oil & Refining Co. (1913), 55 Col. App. 378.

*Connecticut*.—Nat. Sav. Bk. v. Cable (1901), 73 Conn. 568, 48 Atl. 428; St. Paul's Episcopal Church v. Fields (1909), 81 Conn. 670, 72 Atl. 145.

*Florida*.—Gamble v. Malsby (1914), 64 So. 437.

*Idaho*.—Rinker v. Lauer, 13 Ida. 163, 88 Pac. 1057; Kimpton v. Studebaker Bros. Co. (1908), 14 Ida. 552, 94 Pac. 1039; Union Stock Yards Nat. Bk. v. Bolan (1908), 14 Ida. 87, 93 Pac. 508; Home Land Co. v. Osborn (1910), 19 Ida. 75, 112 Pac. 764.

*Illinois*.—Stitzel v. Miller (1910), 157 Ill. App. 390; Sanderson v. Clark, 194 Pac. 472; Peterson v. Emery (1910), 154 Ill. App. 294; First Nat. Bank v. Garland, 160 Ill. App. 407; Bertolet v. Stomer (1911), 164 Ill. App. 605; Laumn v. Harrington (1915), 107 N. E. 826, 267 Ill. 57.

*Indiana*.—Essig v. Porter (1916), 112 N. E. 1005; Bingham v. New Town Bank (1918), 118 N. E. 318; Millikan v. Security Trust Co. (1918), 118 N. E. 568; Wayne Co. Nat. Bank v. Cook, 127 N. E. 779.

*Iowa*.—Allison v. Hollembeak (1908), 138 Iowa 479, 114 N. W. 1059; Des Moines Sav. Bk. v. Arthur (1913), 143 N. W. 556; Blumer v. Schmidt (1914), 146 N. W. 751; Jewett Lumber Co. v. Martin Conroy Co. (1915), 152 N. W. 493; Manhard v. First Natl. Bk. (1917), 165 N. W. 185; Quinn v. Bane (1917), 164 N. W. 788; Kushner v. Abbott, 156 Iowa 598, 137 N. W. 913; Commercial Sav. Bank v. Schaffer, 181 N. W. 492.

*Kansas*.—The Holliday St. Bk. v. Hoffman (1911), 85 Kans. 71, 115 Pac. 239; The Rossville State Bk. v. Heslet (1911), 84 Kans. 315, 113 Pac. 1052; Brown v. Cruce (1913), 133 Pac. 865; National Bank of Webb City v. Dickinson, 102 Kan. 564.

*Kentucky*.—Citizens' Trust, etc., Co. v. Hays, 167 Ky. 560, 180 S. W. 811; Wettlaufer v. Baxter (1910), 137 Ky. 326, 125 S. W. 741; Lynchburg Shoe Co. v. Hensley, 218 S. W. 243.

*Louisiana*.—Continental Bank & Trust Co. v. Times Pub. Co. (1917), 76 So. 612; Donart v. Rabeto (1917), 76 So. 166.

*Maryland*.—Vandeford v. Farmers' & Mech's Nat. Bk. of Westminster, 105 Md. 164, 66 Atl. 47; Harper v. Davis (1911), 115 Md. 349, 80 Atl. 1012; First Denton Natl. Bk. v. Kenney (1911), 116 Md. 24, 81 Atl. 227.

*Massachusetts*.—Shepard v. Abbott (1901), 179 Mass. 300, 60 N. E. 782; Torpey v. Tebo (1903), 184 Mass. 307, 68 N. E. 223; Mass. Nat. Bk. v. Snow (1905), 187 Mass. 159, 72 N. E. 959; Berenson v. London, etc., Ins. Co. (1909), 201 Mass. 172, 87 N. E. 687; Bryne v. Bryne (1911), 209 Mass. 179; Union Tr. Co. v. McGinty (1912), 212 Mass. 205, 98 N. E. 679; Pierce v. Talbott (1913), 213 Mass. 330, 100 N. E. 553.

*Michigan*.—Schmidt v. Pegg (1912), 172 Mich. 159, 137 N. W. 524; White v. Wadhams (1919), 170 S. W. 60.

*Minnesota*.—Polk County State Bank of Crookston v. Walters, 176 N. W. 496.

*Mississippi*.—Sivley v. Williamson (1916), 72 So. 1008.

*Missouri*.—Sublette v. Brewington (1909), 139 Mo. App. 410, 122 S. W. 1150; Dickey v. Adler, 143 Mo. App. 326, 127 S. W. 593; Nelson v. Diffenderffer (1914), 163 S. W. 271; Hawkins v. Wiest (1912), 167 Mo. App. 439; Val Blatz Brewing Co. v. Interstate Ice & Cold Storage Co. (1912), 143 S. W. 542; Mudd v. Farmers' & Merchants' Bk. of Hunnewell (1914), 162 S. W. 314.

*Montana*.—Cornish v. Wolverton (1905), 32 Mont. 456, 81 Pac. 4.

*Nebraska*.—Aurora State Bk. v. Hayes Fames Elevator Co. (1911), 88 Neb. 187; Fisher v. O'Hanlon, Rowan, Appt. (1913), 93 Neb. 529, 141 N. W. 157; First Nat'l Bk. v. Greenlee (1918), 166 N. W. 559; Hecler v. Hiles Estate (1919), 172 N. W. 363.

*New Jersey*.—Borough of Montvale v. Peoples Bank (1907), 67 Atl. 67.

*New York*.—Deyo v. Thompson (1900), 53 A. D. 9; Izzo v. Ludington (1903), 79 A. D. 272, 79 N. Y. Supp. 744; Benedict v. Kress, 97 App. Div. 65, 89 N. Y. Supp. 607; Young v. Am. Bk. No. 2 (1904), 44 Misc. 308, 89 N. Y. Supp. 915; Waddell v. Hanover Nat. Sav. Bk. (1905), 48 Misc. 578, 97 N. Y. Supp. 305; Hibbs v. Brown (1907), 190 N. Y. 167, affirming 112 A. D. 214, 82 N. E. 1108, 98 N. Y. Supp. 353; Fulton v. Varney (1907), 117 A. D. 572, 102 N. Y. Supp. 608; Martial Armand & Co. v. Creighton, 167 N. Y. Supp. 333; Haddock, Blanchard & Co. v. Haddock (1908), 192 N. Y. 499, 82 N. E. 682, 103 N. Y. Supp. 584; Zander v. N. Y. Security & Tr. Co. (1902), 39 Misc. 98, 78 N. Y. Supp. 900; Tanner's Nat. Bk. v. Lacs (1909), 136 A. D. 92, 120 N. Y. Supp. 669; Wray v. Miller (1910), 120 N. Y. Supp. 787; Eq. Tr. Co. of N. Y. v. Were (1911), 132 N. Y. Supp. 351; Rosenburg v. Schoenwald (1911), 126 N. Y. Supp. 615; Eq. Tr. Co. of N. Y. v. Howe (1911), 129 N. Y. Supp. 112; Czerney v. Hass (1911), 144 A. D. 430; Hilborn v. Penn. Cement Co. (1911), 145 A. D. 442; Ryan v. Sullivan (1911), 143 A. D. 471; Eq. Tr. Co. v. Taylor (1911), 131 N. Y. Supp. 475, 72 Misc. 52; Eq. Tr. Co. of N. Y. v. Newman (1911), 129 N. Y. Supp. 259, 72 Misc. 502; St. Lawrence Co. Nat. Bk. v. Watkins (1912), 135 N. Y. Supp. 461; Owens v. Blackburn (1914), 161 A. D. 827, 146 N. Y. Supp. 966; Merchants Nat. Bk. of St. Paul v. Sante Maria Sugar Co. (1914), 147 N. Y. Supp. 498; Kinsella v. Lockwood (1913), 140 N. Y. Supp. 512; Eq. Tr. Co. of N. Y. v. Harger (1913), 102 N. E. 209; Kerr v. Smith (1913), 156 A. D. 807, 142 N. Y. Supp. 57; Crosby v. Bank of Niagara (1915), 154 N. Y. Supp. 883; Hubbard v. Syemite Trap Rock Co. (1917), 165 N. Y. Supp. 486, 178 A. D. 531; Standard Steam Spec. Co. v. Corn Exch. Bk. (1917), 116 N. E. 386, 220 N. Y. 478; Lazarowitz v. Stafford (1917), 167 N. Y. Supp. 910; Shubert Theat. Co. v. Dalton (1917), 167 N. Y. Supp. 332; Osborne v. M., K. & T. Ry. Co., 155 N. Y. Supp. 236, 92 Misc. Rep. 166; Keister v. Wade, 182 N. Y. S. 119; Nelson v. Citizens' Bank, 180 N. Y. S. 747.

*North Carolina*.—Myers v. Petty (1910), 153 N. Car. 462; Pope & Ballance v. Righter-Parry Lumber Co. (1913), 78 S. E. 65; Newland v. Moore (1917), 92 S. E. 367.

*North Dakota*.—Aamoth v. Hunter, 33 N. D. 582, 157 N. W. 299; Fleming v. Sherwood (1912), 139 N. W. 101; Stutsman County Bank v. Jones (1917), 162 N. W. 402.

*Ohio*.—Rockfield v. First Nat. Bk. of Springfield (1907), 77 Ohio St. 311, 83 N. E. 392; Miller v. Kyle (1911), 85 Ohio St. 186, 97 N. E. 372.

*Oklahoma*.—Longmont Nat. Bk. v. Loukonen (1912), 127 Pac. 947; Voris v. Anderson (1915), 153 Pac. 291; DeGroat v. Frecht (1913), 37 Okla. 267, 131 Pac. 172; Logan Co. Bank v. Farmers' Nat. Bank 55 Okla. 592, 155 Pac. 561; Iowa State Sav. Bk. v. Wigmall (1916), 157 (1918), 171 Pac. 859; Union Nat. Bank, etc., v. Mayfield, 174 Pac. 1034.

*Oregon*.—Hull v. Angus (1911), 60 Oreg. 95, 118 Pac. 284; Bailey v. Inland Empire Co., 75 Ore. 309, 146 Pac. 991; Triphonoff v. Sweeney (1913), 130 Pac. 979; Page v. Ford, 65 Ore. 450, 131 Pac. 1013, Ann. Cas. 1915A, 1048, 45 L. R. A. (N. S.) 247; Nickell v. Bradshaw (1919), 183 Pac. 12.

*Pennsylvania*.—Volk v. Shoemaker (1911), 229 Pac. 407.

*South Carolina*.—Folk v. Moore (1916), 88 S. E. 18.

*South Dakota*.—Coleman v. Valentin (1917), 164 N. W. 67.

*Tennessee*.—Gilley v. Harrell (1906), 118 Tenn. 115, 101 S. W. 424; First Nat. Bk. of Elgin, Ill., v. Russell (1911), 139 S. W. 734; Ahrens & Ott Co. v. Moore & Sons (1915), 174 S. W. 270; White v. Hatcher (1916), 188 S. W. 61; Bank of Whitehouse v. White (1917), 191 S. W. 332; Weems v. Neblett (1918), 202 S. W. 930.

*Utah*.—Smith v. Brown (1917), 165 Pac. 468.

*Virginia*.—Williams v. Liphart (1914), 81 S. E. 77; Colley v. Summers Parrott Hardware Co. (1916), 89 S. E. 906.

*Washington*.—Nelson v. Spokane Grain Co. (1907), 47 Wash. 85, 91 Pac. 570; Thomson v. Koch (1911), 62 Wash. 438, 113 Pac. 1110; Parker v. Saxton (1911), 66 Wash. 260; Barker v. Sartori (1911), 66 Wash. 260, 119 Pac. 611; First Nat. Bk. of Snohomish v. Sullivan (1911), 66 Wash. 375; Quest v. Ruggles (1913), 72 Wash. 609, 131 Pac. 202; Peninsula Nat. Bk. v. Pederson (1916), 158 Pac. 246; Coolidge & McClaine v. Saltmarsh (1917), 165 Pac. 508; Bright v. Ofield, 81 Wash. 442, 143 Pac. 159. Curry (1917), 91 S. E. 801.

*West Virginia*.—Pomeroy Nat. Bk. v. Huntington Nat. Bk. (1913), 79 S. E. 662; Eskridge v. Thomas (1917), 91 S. E. 7; Thompson v. Curry (1917), 91 S. E. 801; Hastings v. Gump, 108 S. E. 600.

*Wisconsin* (Section on Municipal Orders and Warehouse Receipts added).—Westberg v. Chicago Lumber Co. (1903), 117 Wis. 589, 94 N. W. 572; Thorpe v. Mindeman (1904), 123 Wis. 149, 101 N. W. 417, 107 Am. St. 1003, 68 L. R. A. 146; Bank of Evansville v. Kurts (1918), 166 N. W. 658; Clarke v. Tallmadge, 176 N. W. 906.

*United States*.—Forest v. Safety Banking & Tr. Co. (1909), 174 Fed. 345 (E. D. Pa.); Klotz Throwing Co. v. Manufacturers' Commercial Co. (1910), 103 C. C. A. 305 (N. Y.), 179 Fed. Reu. 397; Smith v. Nelson Land & Cattle Co. (1914), 212 Fed. 56.

§ 2. **Certainty as to sum; what constitutes.** The sum payable is a sum certain within the meaning of this act, although it is to be paid:

1. With interest; or
2. By stated installments; or
3. By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or
4. With exchange, whether at a fixed rate or at the current rate; or
5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity. <sup>1 1a</sup>

See text, §§ 11, 48.

Cross sections: 1, 64-1, 109.

The Idaho, Iowa, North Carolina and Wyoming acts omit: "Or of interest," in subsection 3.

See section 197 of the North Carolina act. Nebraska adds: "Provided that nothing herein contained shall be construed to authorize any court to include in any judgment on an instrument made in this state any sum for attorney's fees or other costs not allowable in other cases."

In South Dakota the following takes the place of subsection 5: "Provided that nothing herein contained shall be construed to authorize any court to include in any judgment or instrument made in this state any sum for attorney's fees, or other costs not now taxable by law."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Stipulated attorney's fees are recovered as a part of contractual obligation. *Schillinger v. Leary* (Ala.), 77 So. 846.

When objection made only actual attorney's fees are collectible in suit on note. *Florence Oil, etc., Co. v. Hiawatha Gas, etc., Co.*, 55 Colo. 378, 135 Pac. 454.

Attorney's fees sued for in action are included in amount claimed in fixing jurisdiction of court. *Ring v. Merchants' Broom Co.*, 68 Fla. 515, 67 So. 132.

Stipulation as to default in payment will not cover interest not accrued on the principal. *Tyston v. Ellsworth*, 18 Idaho 207, 109 Pac. 134.

A reasonable sum may be inserted in blanks where authority is given to fill same without avoiding instrument. *Kramer v. Schnitzer*, 268 Ill. 603, 109 N. E. 695.

Failure to pay interest within thirty days after due provision rendering note collectible does not make note non-negotiable. *Commercial Sav. Bank v. Schaffer*, — Ia. —, 181 N. W. 492.

When place of performance does not govern validity of attorney fee provision. *Carsey v. Swan*, 150 Ky. 473, 150 S. W. 534.

When attorney's fees collectible without proof of incurring same. *First Nat. Bk. of Vicksburg v. Mayer*, 129 La. 891, 57 So. 308.

Attorney fee provision passes to indorsee with note. *Winn Parish Bank v. White Sulphur Co.*, 133 La. 282, 62 So. 907.



Attorney's fees accrue after services rendered and are not part of the action on note, but are determined on application to court. *First State Bank v. Cohasset Wooden Ware Co.* (Minn.), 161 N. W. 398.

Attorney's fees due as soon as unpaid note placed with attorney for collection. *Morrison v. Ornbaun*, 30 Mont. 111, 75 Pac. 953.

When attorney's fees recoverable as costs of suit. *Bovee v. Helland*, 52 Mont. 51, 156 Pac. 416.

When ten per cent collection charges and attorney's fees are not usurious.

*Gate City Nat. Bank v. Strother* (Mo. App.), 196 S. W. 447.

Reasonableness of attorney's fees need not be proven where no contention made. *First Nat. Bank v. Stam*, 186 Mo. App. 439, 171 S. W. 567.

Guaranty as to attorney's fees in note. *Townsend v. Alewel*, — Mo. App. —, 202 S. W. 447.

Where attorney employed to collect note fees are due regardless of manner of payment. *Williams v. Dockwiler* (N. M.), 145 Pac. 475.

When attorney fee provision will not be enforced in state where invalid, although made and payable in another state. *Exchange Bank v. Appalachian Land, etc., Co.*, 128 N. C. 193, 38 S. E. 813.

Jurisdiction of court determined by amount demanded, including attorney's fees. *Exchange Bank v. Appalachian Land & Lumber Co.*, 128 N. C. 193, 38 S. E. 813.

Where attorney fee is valid in state where made and payable it will be enforced. *First Nat. Bank v. Fleitman*, 168 App. Div. 75, 153 N. Y. Supp. 869.

The provisions of the statute as to attorney fees do not change the law where the states previously held such provisions against public policy. *Miller v. Kyle*, 85 Ohio St. 186, 97 N. E. 372, 74 Cent. Law J. 289.

When attorney's fees become due. *Security State Bank v. Fussell*, 36 Okl. 527, 129 Pac. 746.

Note payable on given date providing for interest from date if not paid when due and interest at given rate from date on which made payable is negotiable. *Citizens' Savings Bank v. Landis*, 37 Okl. 530, 132 Pac. 1101.

Court may add stipulated attorney's fees although jury omits them from verdict. *Continental Gin Co. v. Sullivan*, 48 Okl. 332, 150 Pac. 209.

Note providing for attorney's fees and an additional amount in case of suit is negotiable. *Seton v. Exchange Bank* (Okl.), 150 Pac. 1079.

Attorney's fees added although not submitted by court to jury not error. *Fatoransky v. Pope* (Okl.), 157 Pac. 905.

Attorney's fees may be recovered whether suit is to foreclose note and chattel mortgage or in replevin. *First Nat. Bank v. Howard* (Okl.), 158 Pac. 927.

Provision for payment of "all costs of collection" authorizes only reasonable attorney's fees. *Letcher v. Wrightsman* (Okl.), 158 Pac. 1152.

Note containing two interest provisions is not an unconditional promise to pay a certain sum of money. *Union Nat. Bank v. Mayfield* (Okla.), 169 Pac. 626.

Attorney's fees governed by making demand on note prior to suit on a demand note. *Hodges v. Blaylock*, 82 Ore. 179, 161 Pac. 396.

Ten per cent attorney's fees and all expenses of collection provisions are valid, but only reasonable amount is recoverable. *Holstrom Nat. Bank v. Wood*, 125 Tenn. 6, 140 S. W. 31.

When indorser is liable for attorney's fees. *Franklin v. The Duncan*, 133 Tenn. 472, 182 S. W. 230, Ann. Cas. 1917C, 1080.

Provisions for attorney's fees are a part of contract and can not be collected in separate action. *Merrimon v. Parkey*, 136 Tenn. 645, 191 S. W. 327.

Attorney's fees in blank is an agreement to pay reasonable fees. *McCormick v. Swem*, 36 Utah 6, 102 Pac. 626.

Provision for attorney fees in case of suit does not make note non-negotiable. *McCormick v. Severn*, 36 Utah 6, 102 Pac. 626, 20 Ann. Cas. 1368.

Stipulated attorney's fees are deemed proper unless shown otherwise. *Utah Nat. Bank v. Nelson*, 38 Utah 169, 111 Pac. 907.

Place of performance governs attorney fee provisions in some cases. *Oglesby v. Bank of New York*, 114 Va. 663, 77 S. E. 468, 19 Va. Law Reg. 122.

Attorney fee stipulation regarded as valid although question unsettled. *Colley v. Summers, etc., Co.*, 119 Va. 439, 89 S. E. 906.

Court may reduce attorney's fees if provision be found unreasonable. *Triplett v. Second Nat. Bank*, 121 Va. 189, 92 S. E. 897.

No attorney's fees recoverable when printed blank not filled in. *Scandinavian-American Bank v. Long*, 75 Wash. 270, 134 Pac. 913.

Indorser can not recover attorney's fees from maker when indorsee did not sue for same. *Balkema v. Grolinund*, 92 Wash. 326, 159 Pac. 127.

Provision for payment of attorney's fees after dishonor does not render note non-negotiable. *First Natl. Bank of Shawano v. Miller*, 139 Wis. 126, 120 N. W. 820.

Provision for attorney's appearance and confessing judgment for amount due at any time renders non-negotiable. *Clark v. Tallmadge*, — Wis. —, 176 N. W. 906.

Courts must enforce foreign judgments although attorney's fees are included as a part of the judgments. *Westwater v. Murray*, 245 Fed. 427, 157 C. C. A. 589.

Agreement to pay five per cent commission for collection means the amount incurred up to that amount in collecting. *Chestertown Bank v. Walker*, 163 Fed. 510, 90 C. C. A. 140.

<sup>1a</sup> The following is a complete list of the cases arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Bledsoe v. City Nat. Bk. of Selma* (1912), 7 Ala. App. 195, 60 So. 942; *Ex parte Bledsoe* (1913), 61 So. 813; *Brooks v. Greil Bros.* (1915), 68 So. 874; *Schillinger v. Leary*, 77 So. 846.

*Arizona*.—*People's Nat. Bk. v. Taylor* (1915), 149 Pac. 763.

*Arkansas*.—*Bank of Holly Grove v. Sudbury*, 121 Ark. 59, 180 S. W. 470.

*California*.—*Navajo Co. Bk. v. Dolson* (1912), 126 Pac. 153; *Stoddart v. Goldin* (1919), 178 Pac. 707.

*Colorado*.—*The Firestone Coal Co. v. McKissick* (1913), 24 Colo. App. 294; *Florence Oil & Refining Co. v. Hiawatha Gas, Oil & Refining Co.* (1913), 55 Colo. App. 378, 135 Pac. 454.

*Florida*.—*Baumeister v. Kuntz*, 53 Fla. 340, 42 So. 886; *Taylor v. Am. Nat. Bk. of Florida* (1912), 63 Fla. 631, 57 So. 678; *Holder Turpentine Co. v. Kiser Co.* (1915), 67 So. 85; *Ring v. Merchants' Broom Co.*, 68 Fla. 515, 67 So. 132.

*Idaho*.—Union Stock Yards Nat. Bk. v. Bolan (1908), 14 Ida. 87, 93 Pac. 508; Tyston v. Ellsworth (1910), 18 Ida. 207, 109 Pac. 134.

*Illinois*.—Pitzer v. McCune, 152 Ill. App. 144; Graves v. Neeves (1913), 183 Ill. App. 235; Kramer v. Schnitzer, 268 Ill. 603, 109 N. E. 695.

*Indiana*.—Milliken v. Security Trust Co. (1918), 118 N. E. 568; Easley v. Deer (1919), 121 N. E. 542.

*Iowa*.—Farmers' Loan & Tr. Co. v. Planck (1915), 152 N. W. 390; State Bk. of Halstad v. Bilstad (1912), 136 N. W. 204; Commercial Sav. Bank v. Schaffer, 181 N. W. 492.

*Kansas*.—Smith v. Nelson Land & Cattle Co. (1914), 212 Fed. 56.

*Kentucky*.—Carsey v. Swan, 150 Ky. 473, 150 S. W. 534.

*Louisiana*.—First Nat. Bk. of Vicksburg v. Mayer (1912), 129 La. 981, 57 So. 308; Winn Parish Bk. v. White Sulphur Lumber Co. (1913), 62 So. 907.

*Maryland*.—Chestertown Bk. v. Walker (1908), 163 Fed. 510, 90 C. C. A. 140.

*Missouri*.—Davis v. McColl, 176 Mo. App. 198, 166 S. W. 1113; Bank of Neelyville v. Lee (1914), 168 S. W. 796; First Nat. Bk. v. Stam (1914), 171 S. W. 567; Gate City Nat. Bank v. Strother, 196 S. W. 447; Townsend v. Alewel, 202 S. W. 447; American Sav. Bk. v. Sutton (1918), 402 S. W. 572.

*Montana*.—Bovee v. Helland, 52 Mont. 51, 156 Pac. 416; Morrison v. Ornbaun (1904), 30 Mont. 111, 75 Pac. 953; Cornish v. Wolverton (1905), 32 Mont. 456, 81 Pac. 4; First Nat. Bank v. Berritt, 52 Mont. 359, 157 Pac. 951.

*New Jersey*.—Mackintosh v. Gibbs, 81 N. J. L. 577, 80 Atl. 554, Ann. Cas. 1912D 163.

*New Mexico*.—Williams v. Dockwiler (1914), 145 Pac. 475.

*New York*.—First Nat. Bank v. Fleitman, 153 N. Y. Supp. 869, 168 A. D. 75.

*North Carolina*.—Exchange Bk. v. Apalachian L. & L. Co. (1901), 128 N. Car. 193; Newbern Banking & Trust Co. v. Duffy (1910), 153 N. Car. 62, 68 S. E. 915; Franklin Nat. Bk. v. Roberts Bros. (1915), 84 S. E. 706.

*Ohio*.—Miller v. Kyle (1911), 85 Ohio St. 186, 97 N. E. 372.

*Oklahoma*.—Continental Gin Co. v. Sullivan, 48 Okla. 332, 150 Pac. 209; Citizens' Savings Bank v. Landis, 37 Okla. 530, 132 Pac. 1101; Randolph v. Hudson, 12 Okla. 516, 74 Pac. 946; First Nat. Bk. of Stigler v. Howard (1916), 158 Pac. 927; Security State Bank v. Fussell, 36 Okla. 527, 129 Pac. 746; Seton v. Exchange Bk. (1915), 150 Pac. 1079; Potts v. Crudup (1915), 150 Pac. 170; Tr. & Sav. Bk. of Charles City v. Gleichman (1915), 50 Okla. 441, 150 Pac. 908; First Nat. Bk. v. Muskogee Pipe Line Co. (1914), 139 Pac. 1136; City Nat. Bk. v. Kelly (1915), 151 Pac. 1172; Voris v. Anderson (1915), 153 Pac. 291; Union Bank v. Mayfield (1917), 169 Pac. 626; Letcher v. Wrightsman (Okla.), 158 Pac. 1152.

*Oregon*.—Hodges v. Blaylock, 82 Ore. 179, 161 Pac. 396.

*Pennsylvania*.—Weiskircher v. Connelly (1917), 100 Atl. 965.

*South Carolina*.—Smith v. Phifer, 104 S. C. 396, 89 S. E. 323.

*Tennessee*.—Holstron Nat. Bk. v. Wood (1911), 125 Tenn. 6, 140 S. W. 31; First Nat. Bk. of. Elgin, Ill., v. Russell (1911), 139 S. W. 734; Franklin v. The Duncan, 133 Tenn. 472, 182 S. W. 230, Ann. Cas. 1917C 1080; Merrimon v. Parkey (1917), 191 S. W. 327.

*Texas*.—Sugg v. Smith (1918), 205 S. W. 363; Drinkard v. Jenkins (1919), 207 S. W. 353.

*Utah*.—McCormick v. Swem (1909), 36 Utah 6, 102 Pac. 626, 20 Ann. Cas. 1368; Utah Banking Co. v. Newman (1914), 138 Pac. 1146; Utah Nat. Bank v. Nelson, 38 Utah 169, 111 Pac. 907.

*Virginia*.—Oglesby Co. v. Bk. of N. Y. (1913), 114 Va. 663, 19 Va. L. Reg. 122, 77 S. E. 468; Colley v. Summers Parrott Hardware Co. (1916), 89 S. E. 906; Triplett v. Second Nat. Bk. of Culpepper (1917), 92 Va. 897; Sands v. Roller, 118 Va. 191, 86 S. E. 857.

*Washington*.—Parker v. Saxton (1911), 66 Wash. 260; Barker v. Sartori (1911), 66 Wash. 260, 119 Pac. 611; First Nat. Bk. of Snohomish v. Sullivan (1911), 66 Wash. 375; Puget Sound State Bank v. Wash. Paving Co. (1917), 162 Pac. 870; Davis v. Hibbs (1913), 73 Wash. 315, 131 Pac. 1135; Harris v. Johnson (1913), 134 Pac. 1048; Scandinavian-American Bk. v. Long (1913), 134 Pac. 913; Pease v. Syler (1914), 138 Pac. 310; Bright v. Offield, 81 Wash. 442, 143 Pac. 159; Balkema v. Giolimund (1916), 159 Pac. 127.

*West Virginia*.—First Nat. Bk. of Pineville v. Sanders (1916), 88 S. E. 187; Raleigh Co. Bk. v. Poteet (1914), 82 S. E. 332; First Nat. Bk. v. Sanders (1916), 88 S. E. 187.

*Wisconsin*.—Thorpe v. Mindeman (1904), 123 Wis. 149, 101 N. W. 417, 107 Am. St. 1003, 68 L. R. A. 146; First Nat. Bk. of Shawano v. Miller (1909), 139 Wis. 126, 120 N. W. 820; Clark v. Talmadge, 176 N. W. 906.

*United States*.—Chestertown Bank v. Walker, 163 Fed. 510, 90 C. C. A. 140; Mechanics' American Nat. Bank v. Coleman, 204 Fed. Rep. 24, 122 C. C. A. 338; Smith v. Nelson Land & Cattle Co. (1914), 212 Fed. 56; Kennedy v. Broderick (1914), 216 Fed. 137 (C. C. A., 7th Ct.); Westwater v. Murray, 245 Fed. 427, 157 C. C. A. 589.

§ 3. When promise is unconditional. An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

2. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional. <sup>1. is</sup>

1. Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

See text, §§ 49, 51.

Cross sections: 1-2.

Provision retaining title of chattel in payee of note does not render it non-negotiable. *Ex parte Bledsoe*, 180 Ala. 586, 61 So. 813.

Retention of title to property does not destroy negotiability of note. *Citizens' Nat. Bank v. Bucheit* (Ala.), 71 So. 82.

Conditional indorsement. *Peoples Bank of Mobile v. Moore*, — Ala. —, 78 So. 789.

Word "reimburse" renders promise conditional and note non-negotiable. *Sacred Heart Church Building Committee v. Manson*, — Ala. —, 82 So. 498.

Effect of words "as per contract" in the corner of note upon negotiability. *Strand Amusement Co. v. Fox*, — Ala. —, 87 So. 332.

Notation under signature of maker did not impair negotiability. *Slaughter v. Bank of Bisbee*, 17 Ariz. 484, 154 Pac. 1040.

Conditional promise to pay. *Rector v. Strauss*, — Ark. —, 203 S. W. 1024.

Letter as note prior to Negotiable Instruments Law. *Equitable Trust Co. v. Harger*, 258 Ill. 615, 102 N. E. 209.

Instrument containing provisions as to correspondence course render note non-negotiable. *Midwest Collection Bureau v. Greenwald*, 214 Ill. App. 468.

A note providing for deduction from insurance policy in case of death before maturity is not conditional. *Union Bank v. Spies*, 151 Iowa 178, 130 N. W. 929.

Order directing payment "on account of contract" is negotiable. *First Nat. Bank v. Lightner*, 74 Kans. 736, 88 Pac. 59, 8 L. R. A. (N. S.) 231, 118 Am. St. Rep. 353.

Unconditional promise to pay qualified by words "as per contract dated March 24, 1913." *Continental Bank, etc., v. Times Pub. Co.*, 142 La. 209, 76 So. 612.

Provision in note that it is subject to approval of payee makes it non-negotiable. *Sloan v. McCarty*, 134 Mass. 245.

The words "value received as per contract" do not destroy negotiability of note. *Nat. Bank of Newbury v. Wentworth*, 218 Mass. 30, 105 N. E. 626.

Direction to charge to a certain payment a definite order to pay is not conditional. *Shepard v. Abbott*, 179 Mass. 300, 60 N. E. 782.

Note given subject to approval of payee by its provision is not negotiable. *Worden Grocer Co. v. Blanding*, 161 Mich. 254, 126 N. W. 212.

Where contract was transferred with note on back of which the words "per contract" appeared the purchaser is not charged with provisions of some other contract giving defense. *Snelling State Bank v. Clasen*, 132 Minn. 404, 157 N. W. 643.

Effect of retention of title and default provisions in note. *Polk County State Bank of Crookston v. Walters*, — Minn. —, 176 N. W. 496.

Question of negotiability not considered where tried on another theory. *Lebrecht v. Nellist*, 184 Mo. App. 335, 171 S. W. 11.

Note given to "secure" difference between two sums does not destroy negotiability. *Morehead v. Cummins*, — Mo. App. —, 230 S. W. 656.

Notation "To be used in part renewal of note" on back of check as affecting negotiation. *R. S. Howard Co. v. International Bank of St. Louis*, 198 Mo. App. 284.

Detachment of promissory note from order for specified goods held not to render the instrument, which attached was non-negotiable, negotiable. *State v. Mitton*, 37 Mont. 366, 96 Pac. 926.

Provisions in an instrument for delivery of property for installment payments and attorney fees in case of suit do not render it non-negotiable. *First Nat. Bank v. Barrett*, 52 Mont. 359, 157 Pac. 951.

Note otherwise negotiable is not changed by provisions as to title remaining in vendor. *Whitlock v. Auburn Lumber Co.*, 145 N. C. 120, 58 S. E. 909, 12 L. R. A. (N. S.) 1214.

Township bonds negotiable in form are not affected by tax provisions in relation to payments in statute authorizing their issue, the amount finally to be realized being definite. *Cleveland Co. v. Bank of Gastonia*, 157 N. C. 191, 72 S. E. 996.

Note given for purchase of animal which is warranted does not destroy negotiability. *Critcher v. Ballard*, — N. C. —, 104 S. E. 134.

Condition contained in note that it does not affect the ownership of goods sold renders non-negotiable. *Fleming v. Sherwood*, 24 N. D. 144, 139 N. W. 101, 43 L. R. A. (N. S.) 945.

Direction to pay from certain insurance draft, the same being balance of account, is not payable from particular fund so as to render promise to pay conditional. *Hanna v. McCrory*, 19 N. M. 183, 141 Pac. 996.

Conditional sale provision in negotiable note. *Welch v. Owenby*, — Okla. —, 175 Pac. 746.

Provision for holding notes due at any time payee feels security not sufficient is conditional. *Reynolds v. Vint*, 73 Ore. 528, 144 Pac. 526.

Note is non-negotiable where it contains provision that payee may upon certain conditions declare it due. *Western Farquahar Machine Co. v. Burnett*, 82 Ore. 174, 161 Pac. 384.

Promise to pay if order is accepted is not negotiable. *Neylus v. Port*, 46 Pa. Supr. Ct. 428.

Letter promising to pay "A" if "A" advances money is non-negotiable. *Equitable Trust Co. of N. Y. v. Howe*, 72 Misc. 46, 129 N. Y. Supp. 112.

A letter promising to pay a definite sum in certain items is negotiable. *Equitable Trust Co. v. Taylor*, 146 App. Div. 424, 131 N. Y. Supp. 475.

"I shall pay to order of" held to be negotiable although containing added statements as to transaction. *Merchants' Nat. Bk. v. Santa Maria Sugar Co.*, 162 App. Div. 248, 147 N. Y. Supp. 498.

Words referring to transaction on which note is based do not render note non-negotiable. *Waterbury-Wallace Co. v. Ivey*, 99 Misc. 260, 163 N. Y. Supp. 719.

Draft attached to bills of lading is not conditional because of word "cotton" on face of draft. *Springs v. Hanover Nat. Bk.*, 209 N. Y. 224, 103 N. E. 156, 52 L. R. A. (N. S.) 241.

A note providing for payment and the application of certain moneys thereto is negotiable. *First Nat. Bk. of Snohomish v. Sullivan*, 66 Wash. 375, 119 Pac. 820, Ann. Cas. 1913C, 930.

A promise is unconditional where the note is accompanied with an additional instrument designating fund from which payment is to be made. *VanTassel v. McGrail*, 93 Wash. 380, 160 Pac. 1053.

Erasure from note containing unconditional promise to pay the words "This note to fulfill a certain agreement." *Mason v. Shaffer*, — W. Va. —, 96 S. E. 1023.

The order to pay is absolute where object for which drawn is stated. *Brown v. Cow Creek Sheep Co.*, 21 Wyo. 1, 126 Pac. 886.

Bill of exchange accepted against indorsed bills of lading held conditional. *Guaranty Trust Co. v. Grotian*, 114 Fed. Rep. 433, 52 C. C. A. 235.

Words, "charge to account of X, 100 bales cotton," in a draft, with bills of lading attached, held to render conditional the promise to pay. *Hannay v. Guarantee Trust Co.*, 187 Fed. Rep. 686.

Direction to pay and credit according to letter is not conditional so as to affect negotiability. *In re Boyse*, 33 Ch. Div. 612.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Ex parte Bledsoe*, 180 Ala. 586, 61 So. 813; *Citizens' Nat. Bank of Bucheit*, 71 So. 82; *People's Bank of Mobile v. Moore* (1918), 78 So. 789; *Strand Amusement Co. v. Fox*, 87 So. 332; *Sacred Heart Building Com. v. Manson* (1919), 82 So. 498.

*Arkansas*.—*Rector v. Strauss* (1918), 203 S. W. 1024.

*Arizona*.—*Slaughter v. Bank of Bisbee* (1916), 17 Ariz. 484, 154 Pac. 1040.

*Colorado*.—*Johnson v. Engstone* (1916), 155 Pac. 1095.

*Connecticut*.—*Nat. Sav. Bk. v. Cable* (1901), 73 Conn. 568, 48 Atl. 428.

*Illinois*.—*Equitable Trust Co. v. Harger*, 258 Ill. 615, 102 N. E. 209; *Midwest Collection Bureau v. Greenwald*, 214 Ill. App. 468.

*Iowa*.—*The Union Bk. of Bridgewater v. Spies* (1911), 151 Iowa 178, 130 N. W. 929.

*Kansas*.—*First Nat. Bk. of Hutchinson v. Lightener* (1906), 74 Kans. 736, 88 Pac. 59, 8 L. R. A. (N. S.) 231, 118 Am. St. Rep. 353.

*Louisiana*.—*Bonart v. Rabito*, 141 La. 970, 76 So. 166; *Continental Bank v. Times Pub. Co.*, 142 La. 209, 76 So. 612.

*Maryland*.—*First Denton Nat. Bk. v. Kenney* (1911), 116 Md. 24; *Denton Nat. Bk. v. Kenney* (1911), 116 Md. 124, 81 Atl. 227.

*Massachusetts*.—*Shepard v. Abbott* (1901), 179 Mass. 300, 60 N. E. 782; *Nat. Bk. of Newberry v. Wentworth* (1915), 218 Mass. 30, 105 N. E. 626.

*Michigan*.—*Worder Grocer Co. v. Blanding*, 161 Mich. 254, 126 N. W. 212; *White v. Wadhams* (1919), 170 N. W. 60.

*Minnesota*.—*Snelling State Bank v. Clasen*, 132 Minn. 404, 157 N. W. 643; *Polk County State Bank of Brookston v. Walters*, — Minn. —, 176 N. W. 496.

*Missouri*.—*Lebrecht v. Nellist*, 184 Mo. App. 335, 171 S. W. 11; *R. S. Howard Co. v. International Bank of St. Louis* (1918), 198 Mo. App. 284, 200 S. W. 91; *Morehead v. Cummins*, 230 S. W. 656.

*Montana*.—*State v. Mitton* (1908), 37 Mont. 366, 96 Pac. 926; *First Nat. Bk. of Miles City v. Barrett* (1916), 52 Mont. 359, 157 Pac. 951.

*New Mexico.*—Hanna v. McCrory, 19 N. M. 183, 141 Pac. 996.

*New York.*—Hibbs v. Brown (1907), 190 N. Y. 167, affirming 112 A. D. 214, 82 N. E. 1108, 98 N. Y. Supp. 353; Fulton v. Varney (1907), 117 A. D. 572, 102 N. Y. Supp. 608; Eq. Tr. Co. of N. Y. v. Newman (1910), 69 Misc. 494, 127 N. Y. Supp. 243; Eq. Tr. Co. v. Howe, 72 Misc. 46, 129 N. Y. Supp. 112; Eq. Tr. Co. v. Taylor (1911), 146 App. Div. 424, 131 N. Y. Supp. 475, 72 Misc. 52; Eq. Tr. Co. of N. Y. v. Were (1911), 74 Misc. 469, 132 N. Y. Supp. 351; Merchants Nat. Bk. of St. Paul v. Sante Maria Sugar Co. (1914), 162 App. Div. 248, 147 N. Y. Supp. 498; Waterbury Wallace Co. v. Ivey (1917), 99 Misc. 260, 163 N. Y. Supp. 719; Springs v. Hanover Nat. Bank, 269 N. Y. 224, 103 N. E. 156, 52 L. R. A. (N. S.) 241.

*North Carolina.*—Whitlock v. Auburn Lumber Co. (1907), 145 N. Car. 120, 58 S. E. 909, 12 L. R. A. (N. S.) 1214; Bk. of Sampson v. Hatcher (1909), 151 N. Car. 359, 66 S. E. 308; Commrs. of Cleveland Co. v. Bk. of Gastonia (1911), 157 N. Car. 191, 72 S. E. 996; Critcher v. Ballard, 104 S. E. 134.

*North Dakota.*—Fleming v. Sherwood, 24 N. D. 144, 139 N. W. 101, 43 L. R. A. (N. S.) 945.

*Oklahoma.*—Welch v. Owenby (1919), 175 Pac. 746.

*Oregon.*—Western Farquhar Machine Co. v. Burnett, 82 Ore. 174, 161 Pac. 384.

*Pennsylvania.*—Neylus v. Port, 46 Pa. Superior Ct. 428.

*South Dakota.*—Coleman v. Valentine, — S. D. —, 164 N. W. 67.

*Texas.*—Met. Nat. Bk. v. Vanderpool (1917), 192 S. W. 589.

*Tennessee.*—First Nat. Bk. of Elgin, Ill., v. Russell (1911), 139 S. W. 734.

*Washington.*—First National Bank of Snohomish v. Sullivan, 66 Wash. 375, 119 Pac. 820, Ann. Cas. 1913C, 930; Peninsula Nat. Bk. v. Pederson (1916), 158 Pac. 246; VanTassel v. McGrail, 93 Wash. 380, 160 Pac. 1053.

*West Virginia.*—Mason v. Shaffer, — W. Va. —, 96 S. E. 1023.

*Wyoming.*—Brown v. Cow Creek Co. (1912), 21 Wyo. 1, 126 Pac. 886.

*United States.*—Guaranty Trust Co. v. Grotian, 114 Fed. Rep. 433, 52 C. C. A. 235; Hannay v. Guaranty Trust Co., 187 Fed. Rep. 686.

§ 4. Determinable future time; what constitutes. An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:

1. At a fixed period after date or sight; or
2. On or before a fixed or determinable future time specified therein; or
3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.



An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

See text, § 49.

Cross sections: 1, 184, 1-3, 7-1, 71, 73.

The Wisconsin act (No. 1675-4) substitutes, for the last paragraph, the following: "4. At a fixed period after date or sight, though payable before then on a contingency. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect, except as herein provided."

Corresponding provision of English Bill of Exchange Act: 11 (1), (2).

1. Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

If payment of note is liable to happen it is not a contingency. *Arnett v. Clack*, — Ariz. —, 198 Pac. 127.

Promise to pay on happening of a contingency certain to happen does not affect negotiability. *McClenathan v. Davis*, 243 Ill. 87, 90 N. E. 265, 27 L. R. A. (N. S.) 1017.

Extension for indefinite period does not prevent demand after note due. *Lanum v. Harrington*, 267 Ill. 57, 107 N. E. 826.

Uncertainty as to time of payment renders note non-negotiable even though in mortgage. *Iowa Nat. Bank v. Carter*, 144 Iowa 715, 123 N. W. 237.

Note containing conditional extension for definite period is negotiable. *State Bank of Halsted v. Bilstad*, 162 Iowa 433, 136 N. W. 204, 49 L. R. A. (N. S.) 132.

Provision for declaring debt due for breach of stipulations of mortgage does not render note non-negotiable. *Des Moines Sav. Bank v. Arthur*, 163 Iowa 205, 143 N. W. 556, Ann. Cas. 1916C, 498.

Waiver of notice of extension of time as time certain. *Nat. Bank of Webb City, Mo., v. Dickinson*, 102 Kan. 564.

Anticipating payment privilege in note held not to affect negotiability under statute. *Lowel Trust Co. v. Pratt*, 183 Mass. 379, 67 N. E. 363.

Privilege of anticipating payment renders note non-negotiable. Negotiable instruments law overlooked. *Pierce v. Talbot*, 213 Mass. 330, 100 N. E. 553.

Default of payment provision in note does not render it uncertain as to time. *Schmidt v. Pegg*, 172 Mich. 159, 137 N. W. 524.

Check payable on a contingent date which is certain to happen is good. *Keeler v. Hiles' Estate*, — Neb. —, 172 N. W. 363.

Postdated check accepted in good faith. *Kuflik v. Vaccaro*, 170 N. Y. S. 13.

Marginal notations as to payment did not control body of note. *Union State Bank v. Benson*, 38 N. Dak. 396, 165 N. W. 509.

Privilege of declaring due when payee feels insecure renders note non-negotiable. *Reynolds v. Vint*, 73 Ore. 528, 114 Pac. 526.

Provisions in mortgage for accelerating time of payment of note. *Westlake v. Cooper*, — Okla. —, 171 Pac. 859.

Provision that note is "due if ranch is sold or mortgaged" does not affect negotiability. *Nickell v. Bradshaw*, — Ore. —, 183 Pac. 12.

Provisions for advancing date on account of non-payment of taxes does not render time uncertain. *Bright v. Offield*, 81 Wash. 442, 143 Pac. 159.

When due date changed by contingency note is non-negotiable. *Puget Sound State Bank v. Washington Paving Co.*, 94 Wash. 504, 162 Pac. 870.

Note's negotiability not controlled by contingencies in mortgage. *Smith v. Nelson Land & Cattle Co.*, 212 Fed. 56, 128 C. C. A. 512.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Arizona*.—*Arnett v. Clack*, 198 Pac. 127.

*California*.—*Blake v. Craig* (1918), 173 Pac. 1005.

*Colorado*.—*Drake v. Pueblo Nat. Bk.* (1908), 96 Pac. 996.

*Idaho*.—*Union Stockyards Nat. Bank v. Bolan*, 14 Idaho 87, 93 Pac. 508, 125 Am. St. Rep. 146.

*Illinois*.—*McClenathan v. Davis*, 243 Ill. 87, 90 N. E. 265, 27 L. R. A. (N. S.) 1017; *Lanum v. Harrington*, 267 Ill. 57, 107 N. E. 826.

*Iowa*.—*Des Moines Saving Bank v. Arthur*, 163 Iowa 205, 143 N. W. 556, Ann. Cas. 1916 C. 498; *Iowa Nat. Bk. v. Carter* (1909), 144 Iowa 715, 123 N. W. 237; *State Bank of Halsted v. Bilstad*, 162 Iowa 433, 136 N. W. 204, 49 L. R. A. (N. S.) 132.

*Kansas*.—*The Rossville State Bk. v. Heslet* (1911), 84 Kans. 315, 113 Pac. 1052; *The Holliday St. Bk. v. Hoffman* (1911), 85 Kans. 71, 116 Pac. 239, 35 L. R. A. (N. S.), 390 Ann. Cas. 1912 D1; *Brown v. Cruce* (1913), 133 Pac. 865; *Nat. Bank of Webb City, Mo., v. Dickinson*, 102 Kan. 564.

*Louisiana*.—*Hibernia Bk. & Tr. Co. v. Dresser* (1912-1913), 61 So. 561; *Bonart v. Rabito*, 141 La. 970, 76 So. 166.

*Maryland*.—*Agricultural Chem Co. v. Stringer* (1917), 100 Atl. 774.

*Massachusetts*.—*Lowell Trust Co. v. Pratt*, 183 Mass. 379, 67 N. E. 363; *Torpey v. Tebo* (1903), 184 Mass. 307, 68 N. E. 223; *McQueen v. Spalding* (1919), 120 N. E. 850; *Pierce v. Talbot*, 213 Mass. 330, 100 N. E. 553.

*Michigan*.—*Schmidt v. Pegg* (1912), 172 Mich. 159, 137 N. W. 524; *White v. Wadhams* (1919), 170 N. W. 60.

*Nebraska*.—*Keeler v. Hiles' Estate*, 172 N. W. 363.

*New Mexico*.—*First Nat. Bk. of Albuquerque v. Stover* (1916), 155 Pac. 905.

*New York*.—*Schlesinger v. Schultz* (1905), 110 A. D. 356, 96 N. Y. Supp. 383; *Usef v. Herzenstein* (1909), 65 Misc. 45, 119 N.

*Y. Supp.* 290; *Wray v. Miller* (1910), 120 N. Y. Supp. 787; *Eq. Tr. Co. of N. Y. v. Were* (1911), 132 N. Y. Supp. 351; *Devine v. Price* (1915), 152 N. Y. Supp. 321; *Osborne v. M., K. & T. Ry. Co.* (1915), 155 N. Y. Supp. 236; *Kerr v. Smith* (1913), 156 A. D. 807, 142 N. Y. Supp. 57; *Powell v. Degan* (1917), 167 N. Y. Supp. 770; *Kulfiik v. Vaccaro* (1918), 170 N. Y. Supp. 13.

*North Dakota.*—*Union State Bank v. Benson*, 38 N. Dak. 396, 165 N. W. 509.

*Oklahoma.*—*DeGroat v. Focht* (1913), 131 Pac. 172; *Westlake v. Cooper* (1918), 171 Pac. 859.

*Oregon.*—*Reynolds v. Vint*, 73 Ore. 528, 144 Pac. 526; *Western Farquhar Mch. Co. v. Burnett* (1916), 82 Ore. 174, 161 Pac. 384; *Nickell v. Bradshaw* (1919), 183 Pac. 12.

*Pennsylvania.*—*Empire Nat. Bk. of Clarksburg W. Va. v. High Grade Oil Refining Co.* (1918), 103 A 602.

*Tennessee.*—*First Nat. Bk. of Elgin, Ill. v. Russell* (1911), 139 S. W. 734; *White v. Hatcher* (1916), 188 S. W. 61.

*Washington.*—*Puget Sound State Bank v. Washington Paving Company*, 94 Wash. 504, 162 Pac. 820; *Bright v. Offield*, 81 Wash. 442, 143 Pac. 159.

*West Virginia.*—*Hubbard v. Morton* (1917), 92 S. E. 252.

*Wisconsin.*—*Thorpe v. Mindeman* (1904), 123 Wis. 149, 101 N. W. 417, 107 Am. St. 1003, 68 L. R. A. 146.

*United States.*—*Kobey v. Hoffman* (1916), 229 Fed. 486; *Smith v. Nelson Land & Cattle Co.*, 212 Fed. 56, 128 C. C. A. 512.

### § 5. Additional provisions not affecting negotiability.

An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which,

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
2. Authorizes a confession of judgment if the instrument be not paid at maturity; or
3. Waives the benefit of any law intended for the advantage or protection of the obligor; or
4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.<sup>1. 1a</sup>

See text, § 51.

In Illinois the words "under this Act," are added at the end of the first sentence and the words "if the instrument be not paid at maturity" are omitted in subsection 2. And the following words are added to the last paragraph: "Or authorize the waiver of exemptions from execution."

The North Carolina act (No. 197) contains the following as relating to subdivision 2 above: "That nothing in this act shall authorize the enforcement of an authorization to confess judgment or a waiver of homestead or personal property exemptions or a provision to pay counsel fees for collection incorporated in any instrument mentioned in this act; but the mention of such provision in such instrument shall not affect the other terms of such instruments or the negotiability thereof."

Kansas adds to subsection 1 the following: "Or in case the security should depreciate in value or in case the holder for reasonable cause deems himself insecure." A subsection 5 is added as follows: "Provisions or agreements in concurrent writings or mortgages given to secure payment of such instruments."

Kentucky omits subdivision 3 above.

The Wisconsin act (No. 1675-5) adds: "or authorize the waiver of exemptions from execution."

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

Words "without defalcation" are surplusage. *First Nat. Bank of Rocky Ford v. Lewis*, 57 Colo. 125, 139 Pac. 1102.

Note giving right to take possession of property when insecure held not negotiable. *Kimpton v. Studebaker Bros. Co.*, 14 Idaho 552, 94 Pac. 1039, 125 Am. St. Rep. 185.

Promise to do an act in addition to payment of money and failure therein default only hastens date of payment and does not affect negotiability. *Finley v. Smith*, 165 Ky. 445, 177 S. W. 262, L. R. A. 1915F, 777.

Promise to give added security in case collateral declines and in default due date advanced renders note non-negotiable. *Hibernia Bank v. Dresser*, 132 La. 532, 61 So. 561.

Option to receive money or stock does not affect negotiability. *Pratt v. Higginson (Mass.)*, 119 N. E. 661.

Agreement to pay money and keep certain securities unincumbered renders note non-negotiable. *Strickland v. National Salt Co.*, 79 N. J. Eq. 182, 81 Atl. 828.

Confession of judgment provision affects negotiability. *Yankolivitz v. Wernick*, 20 Pa. Dist. Rep. 223, 59 U. of P. Law Rev. 573.

Provision for confession of judgment at any term is not negotiable. *Milton Nat. Bank v. Beaver*, 25 Pa. Super Ct. 494.

Time of payment not so uncertain as to affect negotiability where promise of added security or default. *Empire Nat. Bank v. Highgrade Oil, etc., Co. (Pa.)*, 103 Atl. 602.

"At any time after note becomes due" does not affect negotiability. *Green v. Dick & Shope*, 72 Pa. Super Ct. 266.

Note authorizing confession of judgment at anytime is not negotiable. *First Nat. Bank v. Russell*, 124 Tenn. 618, 139 S. W. 739, Ann. Cas. 1913A 203.

Promise to pay money and wheat renders note non-negotiable. *Thomson v. Koch*, 62 Wash. 438, 113 Pac. 1110.

Provision to pay taxes is one which renders note non-negotiable as addition to payment of money. *Bright v. Offield*, 81 Wash. 442, 143 Pac. 159.

Words "at any time hereafter" are not definite enough to render note negotiable. *Clark v. Tallmadge*, — Wis. —, 176 N. W. 906.

Provision for giving added collateral in case of depreciation does not destroy negotiability. *Railway Equipment Co. v. Merchants Nat. Bank*, 136 U. S. 268, 10 Sup. Ct. 999, 34 L. ed. 349.

Question as to effect of added promises not considered. *National Salt Co. v. Ingraham*, 143 Fed. 805, 74 C. C. A. 479.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Ex parte Bledsoe* (1913), 61 So. 813.

*California*.—*Navajo Co. Bk. v. Dolson* (1912), 126 Pac. 153.

*Colorado*.—*First Nat. Bank of Rocky Ford v. Lewis*, 57 Colo. 125, 139 Pac. 1102.

*Idaho*.—*Kimpton v. Studebaker Bros. Co.* (1908), 14 Ida. 552, 94 Pac. 1039, 125 Am. St. Rep. 185.

*Iowa*.—*Council Bluffs v. Cuppey*, 41 Iowa 104; *The Union Bk. of Bridgewater v. Spies* (1911), 151 Iowa 178; *Steel v. Ingraham* (1915), 155 N. W. 294.

*Kansas*.—*The Rossville State Bk. v. Heslet* (1911), 84 Kans. 315, 113 Pac. 1052; *The Holliday St. Bk. v. Hoffman* (1911), 85 Kans. 71, 116 Pac. 239, 35 L. R. A. (N. S.) 390, Ann. Cas. 1912D 1.

*Kentucky*.—*Finley v. Smith* (1915), 165 Ky. 445, 177 S. W. 262, L. R. A. 1915F 777.

*Louisiana*.—*Hibernia Bank v. Dresser*, 132 La. 532, 61 So. 561; *Bonart v. Rabito*, 141 La. 970, 76 So. 166; *McDonald v. Leis Admr.*, 12 La. 435.

*Maryland*.—*Whitcomb v. Nat. Exchange Bk.* (1914), 91 Atl. 689, 123 Md. 612.

*Minnesota*.—*Snelling State Bank v. Clasen* (1916), 157 N. W. 643.

*Nebraska*.—*First Nat. Bk. of Sydney v. Baldwin* (1916), 158 N. W. 371.

*New Jersey*.—*Strickland v. Nat. Salt Co.* (1911), 77 N. J. Eq. 328, 81 Atl. 828, affirmed 79 N. J. Eq. 182 (1911).

*North Carolina*.—*Sykes v. Everett* (1914), 83 S. E. 585.

*Oklahoma*.—*Iowa State Sav. Bk. v. Wignall* (1916), 157 Pac. 725; *Williams v. Turnbull* (1917), 162 Pac. 770.

*Pennsylvania*.—*Milton Nat. Bk. v. Beaver* (1904), 25 Pac. Super. Ct. 494; *Volk v. Shoemaker*, 229 Pa. 407, 78 Atl. 933; *Empire Nat. Bank v. Highgrade Oil, etc., Co. (Pa.)*, 103 Atl. 602; *Yankolivitz v. Wernick*,

20 Pa. Dist. Rep. 223, 59 U. of P. Law, Rev. 573; *Green v. Dick & Shope*, 72 Pa. Sup. St. 266.

*Tennessee*.—*First Nat. Bank v. Russell*, 124 Tenn. 618, 139 S. W. 739, Ann. Cas. 1913A, 203.

*Washington*.—*Thomson v. Koch* (1911), 62 Wash. 438, 113 Pac. 11'0; *Bright v. Offield*, 81 Wash. 442, 143 Pac. 159; *Moore & Co. v. Burling* (1916), 160 Pac. 420.

*West Virginia*.—*Greenbrier Valley Bk. v. Bair* (1913), 77 S. E. 274.

*Wisconsin*.—*Wisconsin Meeting of Baptists v. Babler* (1902), 115 Wis. 289, 91 N. W. 678; *Clark v. Tallmadge*, 176 N. W. 906.

*United States*.—*Lincoln Nat. Bank v. Perry*, 66 Fed. 287, 14 C. C. A. 273; *Kennedy v. Broderick*, 216 Fed. 137, 132 C. C. A. 381; *Kobey v. Hoffman*, 229 Fed. 486, 143 C. C. A. 554; *Railway Equipment Co. v. Merchants National Bank*, 136 U. S. 268, 10 Sup. Ct. 999, 34 L. ed. 349; *National Salt Co. v. Ingraham* 143 Fed. 805, 74 C. C. A. 479.

§ 6. Omissions; seal; particular money. The validity and negotiable character of an instrument are not affected by the fact that

1. It is not dated; or
2. Does not specify the value given, or that any value has been given therefor; or
3. Does not specify the place where it is drawn or the place where it is payable; or
4. Bears a seal; or
5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.<sup>1a</sup>

See text, §§ 51, 54, 43, 50, 58. Cross sections: 13, 24, 65, 17, 3. 93, 225.

In Illinois subsection 5 begins as follows: "Is payable in currency or current funds: or" and the last paragraph of said subsection is omitted.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Bledsoe v. City Nat. Bk. of Selma* (1912), 7 Ala. App. 195, 60 So. 942.

*California*.—*Eastman v. Sunset Park Land Co.*, — Cal. App. —, 170 Pac. 642.

*Colorado*.—*Ullery v. Brohm* (1905), 20 Colo. App. 389, 79 Pac. 180.

*Connecticut*.—*St. Paul's Episcopal Church v. Fields* (1909), 81 Conn. 670, 72 Atl. 145.

*Florida*.—*Williams v. Peninsular Grocery Co.* (1917), 75 So. 517.

*Indiana*.—*Hubbard v. First Nat. Bk.* (1916), 114 N. E. 642; *Dieter v. Burke* (1914), 107 N. E. 304.

*Iowa*.—*Dille v. White* (1906), 132 Iowa 327, 109 N. W. 909, 10 L. R. A. (N. S.) 510; *Allison v. Hollembeak* (1908), 138 Iowa 479, 114 N. W. 1059; *LeClere v. Philpott* (1915), 151 N. W. 825.

*Maryland*.—*Arnd v. Heckert* (1908), 108 Md. 300, 70 Atl. 416.

*Massachusetts*.—*Clarke v. Pierce* (1913), 215 Mass. 552, 102 N. E. 1094.

*Missouri*.—*Bk. of Houston v. Day* (1909), 145 Mo. App. 410, 122 S. W. 756; *Milbank-Scampton Milling Co. v. Parkwood* (1911), 133 S. W. 667; *Nelson v. Diffenderffer* (1914), 163 S. W. 271.

*New York*.—*McLeod v. Hunter* (1899), 29 Misc. Rep. 558, 61 N. Y. Supp. 73; *Didato v. Coniglio* (1906), 100 N. Y. Supp. 466, 50 Misc. 280; *Church v. Stevens* (1907), 56 Misc. Rep. 572, 107 N. Y. Supp. 310; *Amsinck v. Rogers* (1907), 189 N. Y. 252, 82 N. E. 134, 12 L. R. A. (N. S.) 875, 121 Am. St. 858; *Hebbelthwaite v. Flint* (1919), 173 N. Y. Supp. 81.

*North Carolina*.—*Burris v. Starr* (1914), 81 S. E. 929; *Aycock Supply Co. v. Windlez* (1918), 96 S. E. 664.

*Tennessee*.—*Easley v. East Tenn. Nat. Bk.* (1917), 198 S. W. 66.

*Texas*.—*Met. Nat. Bk. v. Vanderpool* (1917), 192 S. W. 589.

§ 7. When payable on demand. An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or
2. In which no time for payment is expressed.

Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand.<sup>1, 2a</sup>

See text, § 47.

Cross sections: 71, 73, 17-5, 24.

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

Statement on face of note that it was not to be paid unless payee performed certain services destroyed negotiability. *Spotton v. Dyer*, — Cal. App. —, 184 Pac. 23.

Presentment for payment must be within time fixed in instrument. *Torgerson v. Ohnstad*, — Minn. —, 182 N. W. 724.

Authority to fill blanks with dates does not make demand note. *Usefof v. Herzenstein*, 65 Misc. Rep. 45, 119 N. Y. Supp. 290.

Note payable on demand after date is a demand note and demand in reasonable time is sufficient. *Hardon v. Dixon*, 77 App. Div. 241, 78 N. Y. Supp. 106.

Statute of limitations on note payable on demand after date. *Schlesinger v. Schultz*, 110 App. Div. 356, 96 N. Y. S. 383.

Effect of postdating of check. *Kuflik v. Vaccaro*, 170 N. Y. S. 13.

Where time of payment is not specifically mentioned it is a demand note. *Keister v. Wade*, 182 N. Y. S. 119.

Trade acceptances expressed as payable on Nov. 1 and Dec. 1, respectively, are not payable on demand. *United Ry. & Logging Supply Co. v. Siberian Commercial Co.*, — Wash. —; 201 Pac. 1.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*California*.—*Wetzel v. Cale* (1917), 165 Pac. 692; *Spotton v. Dyer*, — Cal. App. —, 184 Pac. 23.

*Iowa*.—*City Dep. Bk. v. Green* (1908), 138 Iowa 156, 115 N. W. 893; *Anderson v. First Nat. Bk. of Chariton* (1909), 144 Iowa 251, 122 N. W. 918.

*Kansas*.—*Doty v. Garfield Township* (1913), 89 Kans. 719.

*Maryland*.—*American Agricultural Chemical Co. v. Scrimger* (1917), 100 Atl. 774.

*Michigan*.—*First Nat. Bk. v. Coharset Woodenware Co.* (1917), 161 N. W. 398.

*Minnesota*.—*Forgerson v. Ohnstad*, 182 N. W. 724.

*Missouri*.—*Hawkins v. Wiest* (1912), 167 Mo. App. 439.

*New York*.—*McLeod v. Hunter* (1899), 29 Misc. Rep. 558, 61 N. Y. Supp. 73; *Hardon v. Dixon*, 77 App. Div. 241, 78 N. Y. Supp. 106; *Schlesinger v. Schultz* (1905), 110 A. D. 356, 96 N. Y. Supp. 383; *Didato v. Coniglio* (1906), 50 Misc. Rep. 280, 100 N. Y. Supp. 466; *Usefof v. Herzenstein* (1909), 65 Misc. Rep. 45, 119 N. Y. Supp. 290; *Riddle v. Bk. of Montreal* (1911), 145 A. D. 207, 130 N. Y. Supp. 15; *Gilbert v. Adams* (1911), 131 N. Y. Supp. 787; *Kuflik v. Vaccaro* (1918), 170 N. Y. Supp. 13; *Keister v. Wade*, 182 N. Y. S. 119.

*North Dakota*.—*First Nat. Bk. of Pomeroy v. Buttery* (1908), 17 N. D. 326, 116 N. W. 341, 168 L. R. A. (N. S.) 878; *Shuman v. Citizens State Bk of Rugby* (1914), 147 N. W. 398.

*Pennsylvania*.—*Rhone v. Keystone Coal Co.* (1915), 95 Atl. 930.

*Washington*.—*United Ry. & Logging Supply Co. v. Siberian Commercial Co.*, — Wash. —, 201 Pac. 21.

*West Virginia*.—*Lewis Hubbard & Co. v. Morton* (1917), 92 S. E. 252.

*United States*.—*Sullivan v. Ellis* (1915), 219 Fed. 694 (C. C. A., 8th Ct.).



**§ 8. When payable to order.** The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

1. A payee who is not maker, drawer or drawee; or
2. The drawer or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees; or
6. The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.<sup>1, 1a</sup>

See text, §§ 37, 46, as to holder of office.

Cross section, 184. Sub. Sec. 2 "Drawee" by mistake in original New York Act.

Corresponding provision of English Bills of Exchange Act. 8 (4).

In Illinois after subsection 6 the following is inserted: "7. An instrument payable to the estate of a deceased person shall be deemed payable to the order of the administrator or executor of his estate:"

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

Payee may be any one not a maker, drawer or drawee. *Stafford v. Hill*, — Cal. App. —, 200 Pac. 33.

Note payable to order of A or B is negotiable. *Bank v. Spies*, 151 Iowa 178, 130 N. W. 928.

Negotiable instrument indorsed by either of two joint payees is sufficient. *Voris v. Schoonover*, 91 Kan. 530, 138 Pac. 607, 50 L. R. A. (N. S.) 1097.

Note payable to order of maker is negotiable when indorsed by maker. *Doph v. Stubblefield*, — Md. —, 108 Atl. 448.

Payment to survivor of joint payees discharges negotiable instrument. *Park v. Parker*, 216 Mass. 405, 103 N. E. 936.

Note payable to order of blank cannot be filled in by any bearer. *Tower v. Stanley*, 220 Mass. 429, 107 N. E. 1010.

Who may bring suit on note payable to two persons in alternative. *Passut v. Heubner*, 81 Misc. Rep. 249, 142 N. Y. Supp. 546.

Indorsement to order of blank, bearer may not fill blank. *State v. Hinton*, 56 Ore. 428, 109 Pac. 24.

Note indorsed to order of C or D does not affect negotiability. *Page v. Ford*, 65 Ore. 450, 131 Pac. 1013, 45 L. R. A. (N. S.) 247, Ann. Cas. 1915B 1048.

Note payable to A or wife is construed to pass to survivor if one died before maturity. *Smith v. Haire*, 133 Tenn. 343, 181 S. W. 161.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*California*.—*Stafford v. Hill*, — Cal. App. —, 200 Pac. 33.

*Colorado*.—*Scala v. M. & M. Bank* (1918), 171 Pac. 752.

*Illinois*.—*Peterson v. Emery* (1910), 154 Ill. App. 294.

*Iowa*.—*The Union Bk. of Bridgewater v. Spies* (1911), 151 Iowa, 178, 130 N. W. 928.

*Kansas*.—*Voris v. Schoonover* (1914), 91 Kans. 530, 138 Pac. 607, 50 L. R. A. (N. S.) 1097.

*Maryland*.—*Dolph v. Stubblefield*, — Md. —, 108 Atl. 448.

*Massachusetts*.—*Mass. Nat. Bk. v. Snow* (1905), 187 Mass. 159, 72 N. E. 959; *Park v. Parker*, 216 Mass. 405, 103 N. E. 936; *Tower v. Stanley*, 220 Mass. 429, 107 N. E. 1010.

*New York*.—*Hilborn v. Penn. Cement Co.* (1911), 145 A. D. 442; *Passut v. Heubner*, 81 Misc. Rep. 249, 142 N. Y. Supp. 546.

*North Dakota*.—*Aarnoth v. Hunter* (1916), 157 N. W. 299.

*Oregon*.—*State v. Hinton*, 56 Ore. 428, 109 Pac. 24; *Page v. Ford* (1913), 65 Ore. 450, 131 Pac. 1013, 45 L. R. A. (N. S.) 247, Ann. Cas. 1915A, 1048.

*Tennessee*.—*Smith v. Haire*, 133 Tenn. 343, 181 S. W. 161; *Moore v. Carey* (1917), 197 S. W. 1093.

*Virginia*.—*Guewant v. Guewant* (1902), 7 Va. L. R. 639.

*United States*.—*Milton v. Pensacola Bk. & Tr. Co.* (1911), 190 Fed. 126, 111 C. C. A. 166.

*England*.—*Chamberlain v. Young* (1893), 2 Q. B. 206.

§ 9. When payable to bearer. The instrument is payable to bearer:

1. When it is expressed to be so payable; or
2. When it is payable to a person named therein or bearer; or
3. When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or
4. When the name of the payee does not purport to be the name of any person; or
5. When the only or last indorsement is an indorsement in blank.<sup>1. 1a</sup>

See text, § 46.

Cross sections: 30, 34, 16, 56, 124, 191.

In Illinois the following is substituted for subsection 3: "3. When it is payable to the order of a person known by the drawer or maker to be fictitious or non-existent, or of a living person not intended to have any interest in it," and for subsection 5 the following: "5. When, although originally payable to order, it is indorsed in blank by the payee or a subsequent indorsee."

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

Indorsement in blank shown makes prima facie case. *Kaladner v. First Nat. Bk.*, — Ala. —, 84 So. 562.

Note payable to order indorsed in blank is thereafter negotiable by delivery. *Davis v. First Nat. Bank of Blakley*, 192 Ala. 8, 68 So. 261.

Note payable to assumed name of payee can be enforced in true name of payee. *Lockland v. Storch*, 123 Ark. 253, 185 S. W. 262.

Drafts made payable to fictitious persons by agent authorized to issue same are payable to bearer. *American Hominy Co. v. National Bank of Decatur*, — Ill. —, 128 N. E. 391.

Drafts are payable to bearer although made payable to payees who exist but whose names are forged and draft transferred. *Bartlett v. First Nat. Bank*, 247 Ill. 490, 93 N. E. 337.

Note payable to fictitious person or bearer is payable to bearer. *Lane v. Krekle*, 22 Iowa 404.

Draft payable to fictitious payee by drawer without his knowledge is not payable to bearer. *American Exp. Co. v. People's Sav. Bank*, — Ia. —, 181 N. W. 701.

Maker of note to fictitious person estopped to assert the fiction against ignorant holder. *Kohn v. Watkins*, 26 Kan. 691.

Non-negotiable note does not become negotiable by indorsement in blank. *Wettlaufer v. Baxter*, 137 Ky. 362, 125 S. W. 741, 26 L. R. A. (N. S.) 804.

Indorsement in blank by payee of promissory note renders payable to bearer. *Mass. Nat. Bank v. Snow*, 187 Mass. 159, 72 N. E. 959.

Failure to pay to person authorized by check, although a fictitious name appears thereon, renders drawee bank liable to drawer. *Jordan Marsh Co. v. Nat. Shawmut Bank*, 201 Mass. 397, 87 N. E. 740, 22 L. R. A. (N. S.) 250.

Recovery on instrument made to fictitious payee depends upon showing that maker knew the same to be true. *Boles v. Harding*, 201 Mass. 103, 87 N. E. 481.

Indorsement of note in blank makes it payable to bearer. *Leavitt v. Wintman*, — Mass. —, 125 N. E. 390.

Indorsement of fictitious payee's name is a forgery. *People v. Wardner*, 104 Mich. 337, 62 N. W. 405.

Knowledge of agent that checks are drawn to fictitious persons by request of drawer's agent makes check payable to bearer. *Equitable Life Assurance Society v. Nat. Bank of Commerce* (Mo. App.), 181 S. W. 1176.

Instrument payable to estate of deceased person is payable to bearer. *In re Ziegenheim* (Mo. App.), 187 S. W. 893.

Firm name under which several persons are doing business is not a fictitious name in note. *Write Away Pen Co. v. Buckner*, 188 Mo. App. 259, 175 S. W. 81.

Where drawer of check has no knowledge of fictitious payee check is not payable to bearer. *Egner v. Corn Exchange Bank*, 42 Misc. Rep. 552, 86 N. Y. Supp. 107.

Production of check payable to cash is prima facie evidence of ownership. *Cleary v. DeBeck Co.*, 54 Misc. Rep. 537, 104 N. Y. Supp. 831.

Where checks are forged and payable to payees, known by the forger to have no interest therein, they are payable to bearer. *Trust Company of America v. Hamilton Bank*, 127 App. Div. 515, 112 N. Y. Supp. 84.

Instrument unknowingly made payable to a fictitious bearer gives holder no rights. *United Cigar Stores Co. v. American Raw Silk Co.*, 171 N. Y. S. 480.

Instrument must knowingly be made by maker to fictitious person to render it payable to bearer. *Shipman v. Bank*, 126 N. Y. 318, 27 N. E. 371.

Regulations of Treasury Department that funds are payable only upon checks payable to order control, and fictitious payees do not render them payable to bearer. *Phillips v. Mercantile Nat. Bank*, 140 N. Y. 556, 35 N. E. 982, 23 L. R. A. 584, 37 Am. St. Rep. 596.

A requested draft payable to B and then indorsed B's name. C endorsee collected from B. Held B could collect from C as not payable to bearer. *Seaboard Nat. Bank v. Bank of America*, 193 N. Y. 26, 85 N. E. 829.

Indorser in blank of non-negotiable note becomes liable only as assignor. *Johnson v. Lassiter*, 155 N. C. 50, 71 S. E. 23.

Instruments are payable to bearer only when knowingly made to fictitious persons by maker. *Armstrong v. Bank*, 46 Ohio St. 512, 22 N. E. 866, 6 L. R. A. 625, 15 Am. St. Rep. 655.

Drawer of check bound by knowledge of his agent that check was procured to be drawn to fictitious persons by fraud. *Jones v. People's Bank Co.*, 95 Ohio St. 253, 116 N. E. 34.

Indorsement in blank makes note payable to bearer. *Stevens v. Pierce*, — Okla. —, 193 Pac. 417.

Presumption of knowledge of maker that payee of note was fictitious after judgment and verdict. *Weishaas v. Pendeton*, 73 Ore. 190, 144 Pac. 401.

Note payable to W. E. D. & Co. indorsed by W. E. D. in the former name under which he did business was not to fictitious person so as to render it payable to bearer. *Hill v. McCrow*, 88 Ore. 299.

Checks drawn by A, who was authorized to draw same by employer, to person who did not know and was not intended to know thereof, were to fictitious payee and payable to bearer. *Snyder v. Corn Exchange Nat. Bank*, 221 Pa. 599, 70 Atl. 876.

Principal precluded from setting up forgery where manager forged checks and also payees' names. *Litchfield Shuttle Co. v. Cumberland Valley Nat. Bank*, 134 Tenn. 379, 183 S. W. 1006.

Drawer does not vouch for authority of agent to indorse name of payee where agent fraudulently procures checks to be issued. *Good-tellow v. First Nat. Bank*, 71 Wash. 554, 129 Pac. 90, 44 L. R. A. (N. S.) 580.

Government bound by act of officer in making checks to fictitious persons. *Smith v. Nelson Land & Cattle Co.*, 212 Fed. Rep. 56, 128 C. C. A. 512.

Distinction between government and person as drawer. *National Bank of Commerce v. United States*, 224 Fed. 679, 140 C. C. A. 219.

Drawee of government checks has notice that only checks payable to order should be paid, whether payable to bearer by construction or so written. *United States v. Chase Nat. Bank*, 241 Fed. 535, 537.

Draft made payable to fictitious payee by drawer who knew is payable to bearer. *American Hominy Co. v. Millikin Nat. Bank*, 273 Fed. 550.

Check payable to M. or order is not to a fictitious person although issued for a forged note. *Vinden v. Hughes* (1905), 1 K. B. 795.

Acceptor's ignorance of the fact that the bill was made payable to A. who was to have no interest therein does not prevent bill being payable to bearer. *Bank of England v. Vagliano L. R.* (1891), A. C. 107.

Drawer's ignorance as to payee's existence is immaterial. *Clutton v. Attenborough L. R.* (1897), A. C. 90.

Post-dated check may be stamped bill payable on demand. *Royal Bank v. Tottenham* (1894), 2 Q. B. 715.

Plaintiffs entitled to recover for moneys had and received where check issued by them on forged note was intercepted and cashed, it being made to H. or order. *North & South Wales Bank, Ltd., v. Macbeth* (1908), 1 K. B. 13, L. R. (1908) A. C. 137.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Bledsoe v. City Nat. Bank*, 180 Ala. 586, 60 So. 942; *Davis v. First Nat. Bank of Blakeley*, 192 Ala. 8, 68 So. 261; *Kaladner v. First Nat. Bank*, 89 So. 562.

*Arizona*.—*People's Nat. Bk. v. Taylor* (1915), 17 Ariz. 215, 149 Pac. 763.

*Arkansas*.—*Lockland v. Storch*, 123 Ark. 253, 185 S. W. 262; *Williamson Bk. & Tr. Co. v. Miles* (1914), 169 S. W. 368.

*California*.—*Hatton v. Holmes*, 97 Cal. 208, 31 Pac. 1131.

*District of Columbia*.—*Union Nat. Bank of Columbia v. Cook* (1918), 96 S. E. 484.

*Illinois*.—*Noel v. Security Bk. of Chicago* (1911), 163 Ill. App. 82; *Bartlett v. First Nat. Bank*, 247 Ill. 490, 93 N. E. 337; *American Hominy Co. v. National Bank*, 128 N. E. 391.

*Iowa*.—*American Express Co. v. People's Sav. Bank*, 181 N. W. 701.

*Kansas*.—*Grand Lodge v. State Bank*, 92 Kan. 876, 142 Pac. 974, L. R. A. 1915B, 815; *Grand Lodge v. Emporium Bank* (1917), 101 Kan. 369, 166 Pac. 490; *Kohn v. Watkins*, 26 Kan. 691.

*Kentucky*.—*Ohio Valley Bk. & Tr. Co. v. Gt. Southern Fire Ins. Co.* (1917), 197 S. W. 399; *Wettlaufer v. Baxter*, 137 Ky. 362, 125 S. W. 741, 26 L. R. A. (N. S.) 804.

*Louisiana*.—*Rose v. Shaw* (1919), 80 So. 727.

*Massachusetts*.—*Shaw v. Smith*, 150 Mass. 166, 22 N. E. 887, 6 L. R. A. 348; *Mass. Nat. Bank v. Snow*, 187 Mass. 159, 72 N. E. 959; *Murphy v. Met. Nat. Bk.* (1906), 191 Mass. 159; *Boles v. Harding* (1909), 201 Mass. 103, 87 N. E. 481; *Jordan Marsh Co. v. Nat. Shawmut Bank*, 201 Mass. 397, 87 N. E. 740, 22 L. R. A. (N. S.) 250; *Leavett v. Wintman*, — Mass. —, 125 N. E. 390.

*Michigan*.—*Peltier v. Babillion*, 45 Mich. 384, 8 N. W. 99; *People v. Wardner*, 104 Mich. 337, 62 N. W. 405; *Harmon v. Old Detroit Nat. Bank*, 153 Mich. 73, 116 N. W. 617, 17 L. R. A. (N. S.) 514, 126 Am. St. Rep. 467.

*Missouri*.—*Equitable Life Assur. Co. of U. S. v. Nat. Bk. of Commerce* (1916) (Mo. App.), 181 S. W. 1176; *Write Away Pen Co. v. Buckner*, 188 Mo. App. 259, 175 S. W. 81.

*New York*.—*Egner v. Corn Exchange Bank*, 42 Misc. Rep. 552, 86 N. Y. Supp. 107; *Trust Co. of Am. v. Hamilton Bk.* (1908), 127 A. D. 515, 112 N. Y. Supp. 84; *Shipman v. Bank*, 126 N. Y. 318, 27 N. E. 371; *Cleary v. DeBeck Co.*, 54 Misc. Rep. 537, 104 N. Y. Supp. 831; *United Cigar Stores Co. v. American Raw Silk Co.*, 171 N. Y. Supp. 480; *Phillips v. Mercantile Nat. Bank*, 140 N. Y. 556, 35 N. E. 982, 23 L. R. A. 584, 37 Am. St. Rep. 596; *Seaboard Nat. Bk. v. Bk. of America* (1908), 193 N. Y. 26, 85 N. E. 829; *Fifth National Bank v. Central National Bank*, 82 Hun. 559, affirmed 152 N. Y. 636.

*North Carolina*.—*Johnson v. Lassiter*, 155 N. C. 50, 71 S. E. 23; *Newland v. Moore*, 173 N. C. 728, 92 S. E. 367.

*Oklahoma*.—*Stevens v. Pierce*, 193 Pac. 417.

*Oregon*.—*Weishaas v. Pendleton*, 73 Ore. 190, 144 Pac. 401; *Hill v. McCrow* (1918), 88 Ore. 299, 170 Pac. 306.

*Pennsylvania*.—*Lincoln Nat. Bank of Pittsburg v. Miller* (1917), 100 Atl. 269, 255 Pa. 467; *Snyder v. Corn Exchange National Bank*, 221 Pa. 599, 70 Atl. 876.

*Tennessee*.—*Chism v. Bank*, 96 Tenn. 641, 36 S. W. 387, 32 L. R. A. 778; *Unaka Nat. Bank v. Butler* (1904), 113 Tenn. 574, 83 S. W. 655; *Litchfield Shuttle Co. v. Cumberland Valley Nat. Bank*, 134 Tenn. 379, 183 S. W. 1006.

*Vermont*.—*Hale v. Windsor Sav. Bank* (1917), 98 Atl. 993.

*Virginia*.—*Colona v. Parksley Bank* (1917), 92 S. E. 979.

*Washington*.—*Goodfellow v. First Nat. Bank* (1913), 71 Wash. 554, 44 L. R. A. (N. S.) 580, 129 Pac. 90.

*Wisconsin*.—*Marling v. Fitzgerald* (1909), 138 Wis. 93, 120 N. W. 388.

*United States*.—*Smith v. Nelson Land & Cattle Co.*, 212 Fed. Rep. 56, 128 C. C. A. 512; *Nat. Bank of Commerce v. U. S.* (1915), 224 Fed. 679, 140 C. C. A. 219 (9th Ct.); *U. S. v. Chase Nat. Bk.* (1918), 250 Fed. 105; *State v. Chase Nat. Bank*, 241 Fed. 535, 537; *American Hominy Co. v. Millikin Nat. Bank*, 273 Fed. 550.

*England*.—*Vinden v. Hughes* (1905), 1 K. B. 759; *Bank of England v. Vagliano*, L. R. (1891), A. C. 107; *Clutton v. Attenborough*, L. R. (1897), A. C. 90; *Royal Bank v. Tottenham* (1894), 2 Q. B. 715; *North & South Wales Bank Ltd. v. Macbeth* (1908), 1 K. B. 13, L. R. (1908) A. C. 137.

§ 10. **Terms, when sufficient.** The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.<sup>1, 2, 3</sup>

See text, § 40.

Cross section: 17.

Alabama, Idaho, Iowa, North Carolina and Wyoming insert the word "negotiable" between the words "The" and "instrument" above.

The Wisconsin act (No. 1675-10) adds to this section the following words: "Memoranda upon the face or back of the instrument, whether signed or not, material to the contract, if made at the time of delivery, are part of the instrument, and parol evidence is admissible to show the circumstances under which they were made."

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

Words sufficient if indicate promise to pay. *Lehner v. Roth*, — Mo. App. —, 227 S. W. 833.

Terms of instrument need not follow statute to be negotiable. *Nelson v. Citizens' Bank*, 180 N. Y. S. 747.

Words denoting that mortgage is assignable do not govern negotiability of note otherwise silent in its provisions. *Quest v. Ruggles*, 72 Wash. 609, 131 Pac. 202.

Certificate of deposit payable on its return properly indorsed is negotiable. *Forest v. Safety Banking & Trust Co. (E. D. Pa.)*, 174 Fed. 345.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Bledsoe v. City Nat. Bank of Selma*, 180 Ala. 586, 60 So. 942.

*Maryland*.—*Black v. First Nat. Bank* (1903), 96 Md. 399, 54 Atl. 88.

*Missouri*.—*Osborne v. Fridrich* (1908), 134 Mo. App. 449; *Lehner v. Roth*, 227 S. W. 833.

*New York*.—*Gilbert v. Adams* (1911), 131 N. Y. Supp. 787; *Nelson v. Citizens' Bank*, 180 N. Y. Supp. 747.

*Washington*.—*Quest v. Ruggles* (1913), 72 Wash. 609, 131 Pac. 202.

*United States*.—*Forest v. Safety Banking & Trust Co. (E. D. Pa.)*, 174 Fed. 345.

§ 11. Date, presumption, as to. Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance or indorsement, as the case may be.<sup>1, 1a</sup>

See text, § 43.

Construing corresponding provisions of English Bills of Exchange Act: 13 (1).

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

Condition in note that it is not payable until payee performs certain services destroys negotiability. *Spotton v. Dyer*, — Cal. App. —, 184 Pac. 23.

Burden of proving forgery by alteration of date is on defendant. *National City Bank v. Shelton Electric Co.*, 96 Wash. 74, 164 Pac. 933.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*California*.—*Molley v. Pierson* (1918), 174 Pac. 98; *Spotton v. Dyer*, — Cal. App. —, 184 Pac. 23.

*Kentucky*.—*Elsley v. People's Bank of Bardwell* (1916), 185 S. W. 873.

*New York*.—*Sugar v. Silverman* (1919), 173 N. Y. Supp. 182.

*Washington*.—*National City Bank v. Shelton Electric Co.*, 96 Wash. 74, 164 Pac. 933.

§ 12. **Ante-dated and post-dated.** The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered, acquires the title thereto as of the date of delivery.<sup>1, 1a</sup>

See text, § 43.

Missouri act uses word "valid" instead of "invalid," a clerical error.

Corresponding provision of English Bills of Exchange Act: 13 (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

Drawer can not be garnisheed as payee's debtor after delivery of post-dated check. *American Agricultural Chemical Co. v. Scrimger*, 130 Md. 389, 100 Atl. 774.

Ante-dated or post-dated instruments and effect of. *Bank of Houston v. Day*, 145 Mo. App. 410, 122 S. W. 756.

Post-dating of instrument does not affect negotiability and negotiating prior to date does not put indorsee upon inquiry. *Trephonoff v. Sweeny*, 65 Ore. 209, 130 Pac. 979.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Idaho*.—*Smith y. Fields* (1911), 19 Ida. 558, 114 Pac. 668.

*Kentucky*.—*First Nat. Bk. v. Bickel* (1911), 143 Ky. 754, 137 S. W. 790.



*Maryland.*—American Agricultural Chemical Company v. Scrimger, 130 Md. 389, 100 Atl. 774.

*Missouri.*—Houston v. Day (1909), 145 Mo. App. 410, 122 S. W. 756.

*New York.*—Albert v. Hoffman (1909), 64 Misc. Rep. 87, 117 N. Y. Supp. 1043.

*Oregon.*—Triphonoff v. Sweeney (1913), 65 Ore. 209, 130 Pac. 979.

*Pennsylvania.*—Rathfon v. Locher (1906), 215 Pac. 571.

*Virginia.*—Colona v. Parksley Bank (1917), 92 S. E. 979.

*West Virginia.*—Lewis Hubbard & Co. v. Morton (1917), 92 S. E. 252.

*Wisconsin.*—Citizens Nat. Bank of Green Bay v. Harter (1908), 134 Wis. 408.

§ 13. When date may be inserted. Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not void the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.<sup>1</sup> <sup>1a</sup>

See text, § 43.

Cross section: 14.

Construing corresponding provision of English Bills of Exchange Act: Section 12.

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

Knowingly inserting wrong date in undated instrument will avoid same as to party so inserting date. Bank of Houston v. Day, 145 Mo. App. 410, 122 S. W. 756.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Iowa.*—Booch v. Goochi (1916), 16 N. W. 333.

*Missouri.*—Houston v. Day (1916), 145 Mo. App. 410, 122 S. W. 756.

*Tennessee.*—Holman v. Higgins, 134 Tenn. 387, 183 S. W. 1008, L. R. A. 1916F, 1263.

*Texas.*—Landon v. Foster Drug Co. (1916), 186 S. W. 434.

*United States.*—Richards v. Street (1908), 31 App. D. C. 427.

§ 14. **Blanks, when may be filled.** Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

See text, § 58.

Cross sections: 124, 125, 66, 109, 119-5, 52, 15.

In Illinois the words "issued or" are added before "negotiated" in the last sentence.

In South Dakota the following is substituted for this section: "One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank, for the purpose of filling afterwards, is liable on the instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filled, so long as it remains negotiable in form."

The Kentucky act says "negotiable" instead of "negotiated."

The Wisconsin act (No. 1675-14) reads, "complete it prior to negotiation by filling," etc., instead of "complete it by filling," etc.

The Wisconsin act reads, "operates as an authority," etc., instead of "operates as a *prima facie* authority."

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

Alteration by inserting legal rate of interest in blank is not material. *Crawford v. Simonton*, 163 Ala. 609, 50 So. 1024.

Payee may be holder in due course. *Ex parte Goldberg v. Lewis*, 191 Ala. 356, 67 So. 839, L. R. A. 1915F, 1147.

Insertion of more than legal rate in interest blank is material alteration. *Ayers v. Walker*, 54 Colo. 571, 131 Pac. 384.

Estoppel is good against one who signs note in blank except name of payee where payee's firm filled in and negotiated it in bank after indorsing payee's name. *Richards v. Street*, 31 App. Cas. D. C. 427.

Where note given with authority to insert necessary amount of attorney's fees it was not an alteration to do so after services rendered. *Kramer v. Schnitzer*, 268 Ill. 603, 109 N. E. 695,

Filling in blank after words "payable at" does not avoid instrument in hands of holder in due course. *Johnston v. Hoover*, 139 Iowa 143, 117 N. W. 277.

Note payable "on or before four — after date" is not a demand note. In re Estate of Philpott, 169 Iowa 555, 151 N. W. 825.

When can payee be holder in due course. *Devoy & Kuhn Coal Co. v. Huttig*, 174 Iowa 357, 156 N. W. 413.

Note should be reformed which was indorsed prior to payee's learning of the omission of his name by putting in name. *Farmers Loan & Trust Co. v. Brown* (Iowa), 165 N. W. 70.

Plaintiff's right to complete instrument. *First Nat. Bank of Hawkeye v. Patterson*, — Ia. —, 177 N. W. 545.

Where defendant signed note in blank for certain purpose and the purpose was carried out plaintiffs were holders for value, as note was filled in in accordance with authority, although done in plaintiff's presence. *Herman's Exr. v. Gregory*, 131 Ky. 819, 115 S. W. 809.

It is not alteration to fill in blank with place of payment either within or without the state. *Diamond Distilleries Co. v. Gott*, 137 Ky. 585, 126 S. W. 131, 31 L. R. A. (N. S.) 643.

Note executed in blank is issued to payee and not negotiated where his name appears as payee. *Southern Nat. Life, etc., Co. v. People's Bank* (Ky.), 198 S. W. 543.

Person in possession of instrument made in blank has *prima facie* authority to fill in all blanks. *Linthicum v. Bagby*, 131 Md. 644, 102 Atl. 997.

Incomplete instruments put purchaser upon inquiry as to authority to complete. *Boston Steel & Iron Co. v. Steuer*, 183 Mass. 140, 66 N. E. 646, 97 Am. St. Rep. 426.

Maker having added another provision note was held in due course by payee, who could sue the prior indorser in blank as indorser. *Thorpe v. White*, 188 Mass. 333, 74 N. E. 592.

An instrument is negotiated when handed for value to the payee named therein. *Liberty Trust Co. v. Tilton*, 217 Mass. 462, 465, 105 N. E. 605, L. R. A. 1915B., 144.

Check received by payee thereof from a third person in payment of debt is held in due course, although drawn without authority. *National Investment Co. v. Corey*, 222 Mass. 453, 111 N. E. 357.

Check payable to bank received from third person in payment of his indebtedness, without notice of infirmities, was held in due course. *Colonial Fur Co. v. First Nat. Bank*, 227 Mass. 12, 116 N. E. 731.

Payee can not be holder in due course. *Long v. Shafer*, 185 Mo. App. 641, 171 S. W. 69.

Note in several inks not presumed completed before delivery and signature. *Exchange Bank v. Robinson*, 185 Mo. App. 582, 172 S. W. 628.

Notes providing for interest in blank draw legal rate without filling blank. *Hornstein v. Cifuno*, 86 Neb. 103, 125 N. W. 136.

Plaintiff has burden of showing blanks filled within reasonable time. *Madden v. Gaston*, 137 App. Div. 294, 121 N. Y. Supp. 951.

Testimony of maker that authority to fill in blanks was not given will rebut presumption of authority. *Equitable Trust Co. of New York v. Lyons*, 72 Misc. Rep. 49, 129 N. Y. Supp. 79.

Knowledge of transferee that instrument was incomplete and completed before transfer puts him upon inquiry as much as accepting it uncompleted. *Dumbrow v. Geld*, 72 Misc. Rep. 400, 130 N. Y. Supp. 182.

Drawer can not recover when payee holder in due course. *Bergstrom v. Ritz-Carlton Co.*, 171 App. Div. 776, 154 N. Y. Supp. 959.

Delivery of note in blank gives implied authority to fill blanks. *Business Man's League v. Sregow*, 153 N. Y. Supp. 231.

Payee holder in due course. *Brown v. Brown*, 91 Misc. Rep. 220, 154 N. Y. Supp. 1098.

*Prima facie* authority to fill in blanks is rebuttable. *Bloom v. Horwitz*, 100 Misc. Rep. 687, 166 N. Y. Supp. 786.

When may payee in note executed in blank become purchaser for value. *Miller v. Campbell*, 173 App. Div. 821, 160 N. Y. Supp. 834.

Plaintiff's right to fill in blank in note. *Keister v. Wade*, 182 N. Y. S. 119.

Plaintiff takes subject to equities of defendant against payee where signature is forgery. *Seymour v. Leyman*, 10 Ohio St. 283.

Payee entitled to recover although surety induced to sign by fraud of maker. *Potts v. First State Bank (Okla.)*, 151 Pac. 859.

Person in possession has *prima facie* authority to fill blank in note. *Simpson v. First Nat. Bank of Roseburg*, — Ore. —, 185 Pac. 913.

Payee may be holder for value when instrument is negotiated to him. *Johnson v. Knipe (Pa.)*, 103 Atl. 957.

Filling in an unauthorized amount is a defense and burden is on indorsee. *Massey v. Massey*, — Pa. —, 110 Atl. 341.

Position of holder for value not necessarily changed because he is also payee. *Figures v. Fly*, 137 Tenn. 358, 378, 193 S. W. 117.

Where note given with authority to cashier to fill in blank before words "after date" not avoided by his doing so four months later by adding words "four months." *Howard National Bank v. Arbuckle (Vt.)*, 102 Atl. 477.

Purchasers of incomplete instruments are put upon inquiry as to authority of person intrusted with them. *Guerrant v. Guerrant*, 7 Va. L. Reg. 639.

Where one intrusted with note signed in blank exceeded amount authorized the holder was not a holder in due course against maker, the note being used to pay indebtedness and the holder's name inserted as payee. *Herdman v. Wheeler (1902)*, 1 K. B. 361.

Maker of note estopped to deny validity where note executed in blank to have amount inserted and name of designated payee, amount increased above authority. *Lloyds Bank v. Cooke (1907)*, 1 K. B. 794.

Payee never holder in due course. *Lewis v. Clay*, 67 L. J. Q. B. (N. S.) 224.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Goldberg v. Lewis*, 191 Ala. 356, 67 So. 839, L. R. A. 1915F, 1157; *Crawford v. Simonton*, 163 Ala. 609, 50 So. 1024.

*Colorado*.—*Ayers v. Walker*, 54 Colo. 571, 131 Pac. 384.

*Connecticut*.—*Cleveland Co. v. Chittenden (1909)*, 81 Conn. 667, 71 Atl. 935.

*Illinois*.—*Manussier v. Wright (1910)*, 158 Ill. App. 214; *Kramer v. Schnitzer*, 268 Ill. 603, 109 N. E. 695.

*Indiana*.—*Kindler Co. v. First Nat. Bank of Fond du Lac (1915)*, 109 N. E. 66.

*Iowa*.—Vander Ploey v. Van Zunk (1907), 135 Iowa 350, 112 N. W. 807, 13 L. R. A. (N. S.) 490; Johnston v. Hoover (1908), 139 Iowa 143, 117 N. W. 277; LeClere v. Philpott (1915), 169 Iowa 555, 151 N. W. 825; Devoy v. Kuhn Coal & Coke Co. (1916), 156 N. W. 412; Farmers Loan & Tr. Co. v. Brown (1917), 165 N. W. 70; Builders' Lime & Cement Co. v. Weimer, 170 Iowa 444, 151 N. W. 100, Ann. Cas. 1917C, 1174; Devoy & Kuhn Coal Co. v. Huttig, 174 Iowa 357, 156 N. W. 413; First Nat. Bank of Hawkeye v. Patterson, 177 N. W. 545.

*Kansas*.—Iowa City State Bank v. Claypool (1914), 137 Pac. 949.

*Kentucky*.—Stanley v. Davis (1908), 32 Ky. L. 1135, 107 S. W. 773; Herman's Excr. v. Gregory (1909), 131 Ky. 819, 115 S. W. 809; Diamond Distilleries Co. v. Gott, 137 Ky. 585, 126 S. W. 131, 31 L. R. A. (N. S.) 643; Southern Nat. Life, etc., Co. v. People's Bank (Ky.), 198 S. W. 543.

*Maryland*.—Linthicum v. Bagby (1917), 131 Md. 644, 102 Atl. 997.

*Massachusetts*.—Boston Steel & Iron Co. v. Steuer (1903), 183 Mass. 140, 66 N. E. 646, 97 Am. St. Rep. 426; Thorpe v. White, 188 Mass. 333, 74 N. E. 592; Lowell v. Bickford, 201 Mass. 543, 545, 88 N. E. 1; J. G. Brill & Co. v. Norton, etc., Railway, 189 Mass. 431, 437, 75 N. E. 1090; Liberty Trust Co. v. Tilton, 217 Mass. 462, 105 N. E. 605, L. R. A. 1915B, 144; Colonial Fur Co. v. First Nat. Bank, 227 Mass. 12, 116 N. E. 731; Perry v. Pye (1913), 215 Mass. 403, 102 N. E. 653; Stone v. Sergeant (1915), 220 Mass. 445, 107 N. E. 1014; Tower v. Stanley (1915), 220 Mass. 429, 107 N. E. 1010; Munroe v. Stanley, 220 Mass. 438, 107 N. E. 1012.

*Missouri*.—Exchange Bank v. Robinson, 185 Mo. App. 582, 172 S. W. 628; Long v. Shafer, 185 Mo. App. 641, 171 S. W. 69.

*Nebraska*.—Hornstein v. Cifuno, 86 Neb. 103, 125 N. W. 136; Hartington Bank v. Breslin (1910), 88 Neb. 47, 128 N. W. 659, 31 L. R. A. (N. S.) 130, Ann. Cas. 1912B 1008.

*New York*.—Yonker's Nat. Bank v. Mitchell (1913), 141 N. Y. Supp. 128; First Nat. Bank of the City of Brooklyn v. Bridley (1906), 112 A. D. 398, 98 N. Y. Supp. 445; Madden v. Gaston (1910), 137 A. D. 294, 121 N. Y. Supp. 951; Rodgers v. Baker (1910), 136 A. D. 851, 122 N. Y. Supp. 91; Eq. Tr. Co. of N. Y. v. Lyons (1911), 72 Misc. Rep. 49, 129 N. Y. Supp. 79; Dumbrow v. Gelb (1911), 72 Misc. Rep. 400, 130 N. Y. Supp. 182; Biz Men's League of Harlem v. Sragow (1915), 153 N. Y. Supp. 231; Brown v. Brown, 91 Misc. Rep. 220, 154 N. Y. Supp. 1098; Bergstrom v. Ritz-Carlton Co., 171 App. Div. 776, 154 N. Y. Supp. 959; Cole v. Harrison (1915), 153 N. Y. Supp. 200; Flood v. Steinmetz (1915), 153 N. Y. Supp. 192; Bank of Franco-Americane v. Bergstrom (1916), 157 N. Y. Supp. 635; Keister v. Wade, 182 N. Y. Supp. 119; Union Tr. Co. of New Jersey v. McCrum (1911), 145 A. D. 409, 129 N. Y. Supp. 1078, affirmed without opinion, 207 N. Y. 721; Miller v. Campbell, 173 App. Div. 821, 160 N. Y. Supp. 834; Bloom v. Horwitz (1918), 100 Misc. Rep. 687, 166 N. Y. Supp. 786; Hathaway Co. v. Co. of Delaware, 185 N. Y. 368, 78 N. E. 153, 13 L. R. A. (N. S.) 273, 113 Am. St. Rep. 209.

*North Carolina*.—Phillips v. Hensley (1917), 94 S. E. 673.

*Ohio*.—Seymour v. Leyman, 10 Ohio St. 283.

*Oklahoma.*—Potts v. First State Bank (Okla.), 151 Pac. 859.

*Oregon.*—Simpson v. First Nat. Bank of Roseburg, — Ore. —, 185 Pac. 913

*Pennsylvania.*—Massy v. Massy, 110 Atl. 341; Johnston v. Knipe (Pa.), 105 Atl. 705; Johnston v. Knipe (Pa.), 103 Atl. 957.

*Tennessee.*—Holman v. Higgins, 134 Tenn. 387, 183 S. W. 1008; Figures v. Fly, 137 Tenn. 358, 193 S. W. 117.

*Vermont.*—Howard National Bank v. Arbuckle (Vt.), 102 Atl. 477.

*Virginia.*—Guewant v. Guewant (1902), 7 Va. L. R. 639; Brown v. Thomas (1917), 92 S. E. 977.

*Washington.*—Bowles v. Frazer, 59 Wash. 336, 109 Pac. 812, 31 L. R. A. (N. S.) 613.

*West Virginia.*—Rusmisse v. White Oak Co. (1917), 92 S. E. 672.

**§ 15. Incomplete instrument not delivered.** Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.<sup>1, 1a</sup>

See text, § 53.

In the Wisconsin Act the word "negotiation" is substituted for the word "delivery" at the end of the section.

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

Plea must show knowledge of incompleteness to affect its validity. Bass v. Lee (Fla.), 74 So. 7.

Maker is not liable where notes in blank were not delivered even in hands of innocent holder. Holzman, Cohen & Co. v. Teague, 158 N. Y. Supp. 211.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Colorado.*—Norman v. McCarthy (1913), 138 Pac. 28.

*Florida.*—Bass v. Lee (Fla.), 74 So. 7.

*Louisiana.*—Polizotto v. People's Sav. Bank (1910), 125 La. 770, 51 So. 843.

*Missouri.*—Burchett v. Fink (1909), 139 Mo. App. 381; Chitwood v. Hatfield (1909), 136 Mo. App. 688; Allen Grocery Co. v. Bank of Buchanan Co. (1916), 192 Mo. App. 476, 181 S. W. 777.

*New York.*—Linick v. Nutting (1910), 125 N. Y. Supp. 93; Holzman, Cohen & Co. v. Teague (1915), 156 N. Y. Supp. 290; Holzman,

Cohen & Co. v. Teague (1916), 158 N. Y. Supp. 211; Rubel v. Honig (1917), 164 N. Y. Supp. 219.

*Washington.*—Seattle Nat. Bk. v. Becker (1913), 133 Pac. 613.

*West Virginia.*—Rusmisset v. White Oak Stave Co. (1917), 92 S. W. 672.

*United States.*—In re Continental Engine Co. (1916), 234 Fed. 58.

**§ 16. Delivery; when effectual; when presumed.** Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved. <sup>1. 1a</sup>

See text, § 53.

Cross sections: 15, 64-1, 109, 56, 9-5, 56, 124, 191, 51, 187, 52-3, 55.

The North Carolina Act (Sec. 16) omits "accepting" in the second sentence.

Kansas omits next to the last sentence.

In South Dakota the third paragraph beginning with the word "but" and ending with the word "presumed" is omitted and the following sentence substituted: "An indorsee of a negotiable instrument in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable and notwithstanding any defect in the title of the person from whom he acquired it."

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

Notice of failure to comply with conditions before delivery must be shown to holder before successful defense on that ground. *Ex parte Goldberg & Stone*, 191 Ala. 356, 67 So. 839.

Conditional delivery contract need not be in writing. *Norman v. McCarthy*, 56 Colo. 290, 138 Pac. 28.

Transfer which constitutes delivery. *Lewis County v. State Bank of Peck*, — Ida. —, 170 Pac. 98.

Delivery of note on condition shown by oral evidence. *Straus v. Citizens State Bank*, 164 Ill. App. 420.

Date of delivery makes note effective and mailing same is sufficient. *Burr v. Becklar*, 264 Ill. 230, 106 N. E. 206, L. R. A. 1916A, 1049.

Where note is negotiated in breach of faith holder has burden of proof to show holder in due course. *Waukee Sav. Bank v. Jones*, 179 Iowa 261, 159 N. W. 691.

Agreement before delivery that maker was not to pay cannot be shown. *Stevens v. Inch*, 98 Kan. 306, 158 Pac. 43.

Parol agreement before execution cannot be shown that note was to be extended. *Commercial Nat. Bank v. Hutchinson Box Co.*, 98 Kan. 350, 158 Pac. 44.

Surety may show conditional signing if he shows payee's knowledge before delivery. *Goutermont v. Bland*, 99 Kan. 431, 162 Pac. 270.

Holder in due course may recover on note indorsed in blank by payee from whom it was stolen. *Mass. Nat. Bank v. Snow*, 187 Mass. 159, 72 N. E. 959.

Bill of exchange must be delivered and indorsed by payee before it is in existence when made to the order of the drawer. *Stouffer v. Curtis*, 198 Mass. 560, 85 N. E. 180.

Holder in due course entitled to recover although check issued without authority. *Buzzell v. Tobin*, 201 Mass. 1, 86 N. E. 923.

Holders in due course are not immediate parties. *Liberty Trust Co. v. Tilton*, 217 Mass. 462, 464, 105 N. E. 605, L. R. A. 1915B, 144.

Selling of note to payee named therein is a negotiation thereof. *National Investment Co. v. Corey*, 222 Mass. 453, 111 N. E. 357.

No delivery held to be defense against holder in due course. *Sheffer v. Fleischer*, 158 Mich. 270, 122 N. W. 543.

Where municipal bonds payable to bearer are stolen and negotiated, purchaser takes title in good faith it is valid. *City of Adrian v. Whitney Central Nat. Bank*, 180 Mich. 171, 146 N. W. 654.

Checks drawn to order of A, who indorsed them and gave them to drawer to deliver to B, held delivered to A. *Behrens v. Kruse*, 132 Minn. 69, 155 N. W. 1065.

Conditional delivery for special purpose shown as defense against payee. *First Nat. Bank v. Miller*, — N. D. —, 179 N. W. 997.

Failure of performance of condition as part of delivery may be shown by parol evidence. *Gamble v. Riley*, 39 Okla. 363, 135 Pac. 390.

Agreement as to maker's liability to pay one-half is no defense. *Bailey v. Lankford (Okla.)*, 154 Pac. 672.

When note transferred by payee before maturity and after payment of maker is good in hands of holder in due course. *Critser v. Steele (Okla.)*, 162 Pac. 795.

Burden of proving conditional delivery of note in blank is on defendant. *Madden v. Gaston*, 137 App. Div. 294, 121 N. Y. Supp. 951.

Check stolen by payee and endorsed for value, holder in due course entitled to recover. *Schaeffer v. Marsh*, 90 Misc. Rep. 307, 153 N. Y. Supp. 16.

Conversation at time of making note admissible only to show no contract until a certain event happened. *Weinhandler v. Loewenthal*, 159 N. Y. Supp. 695.

Delivery on unfulfilled condition must be pleaded. *Bloom v. Horwitz*, 97 Misc. Rep. 622, 162 N. Y. Supp. 230.



Note delivered on condition which was not fulfilled is not shown to have valid inception. *Rubel v. Honig*, 178 App. Div. 53, 164 N. Y. Supp. 219.

Collateral oral agreement cannot be shown unless fraud, accident or mistake pleaded. *Cherokee Co. v. Meroney*, 173 N. C. 653, 92 S. E. 616.

Parol evidence may be admitted to show execution of note upon conditions of a certain contingency happening. *Farrington v. McNeill*, 174 N. C. 420, 93 S. E. 957.

Parol evidence to vary date of falling due not admissible. *Home-wood People's Bank v. Heckert*, 207 Pa. 231, 56 Atl. 431.

Maker may show want of consideration and intention of parties as to delivery. *Lee v. Benjamin (R. I.)*, 102 Atl. 713.

When delivery presumed. *Commercial Security Co. v. Donald Drug Co.*, — S. Car. —, 96 S. E. 529.

Defendant has burden of showing conditional delivery. *Smith v. Brown (Utah)*, 165 Pac. 468.

When evidence shows no contract or conditioned delivery. *Martineau v. Hanson*, 47 Utah 549, 155 Pac. 432.

Conditioned endorsement before delivery must be shown to have been called to attention of payee before delivery completed. *Farmers' & Stockgrowers' Bank v. Pahvent Valley Land Co. (Utah)*, 165 Pac. 462.

Failure of payee to secure additional indorsers as agreed may be set up as defense of conditional delivery. *Seattle National Bank v. Becker*, 74 Wash. 431, 133 Pac. 613.

Oral agreement to pay from certain fund does not control promise to pay in note. *Gwinn v. Ford*, 85 Wash. 571, 148 Pac. 891.

Note stolen from maker held valid in hands of holder for value. *Angus v. Downs*, 85 Wash. 75, 147 Pac. 630, L. R. A. 19:5E, 351.

Prior agreement to surrender note upon condition happening is not admissible. *Post v. Tamm*, 91 Wash. 504, 158 Pac. 91.

Contemporaneous oral agreements may be shown between parties other than holders in due course. *Hodge v. Smith*, 130 Wis. 326, 110 N. W. 192.

Parol testimony may show intent as to delivery. *Paulson v. Boyd*, 137 Wis. 241, 118 N. W. 841.

Where note to bank, an assignment of stock placed with bank conditioned that if stock taken note to be collected, delivery held conditional. *Union Investment Co. v. Epley*, 164 Wis. 438, 160 N. W. 175.

Conditions of delivery may be shown between parent and child. *Storey v. Storey*, 131 C. C. A. 269, 214 Fed. 973.

Note handed to payee with understanding that A must sign is not delivered. *Continental Engine Co., In re*, 234 Fed. Rep. 58, 148 C. C. A. 74.

Holder in due course entitled to recover on municipal bonds although indorser had no valid delivery. *Town of Newbern v. National Bank*, 234 Fed. 209, 148 C. C. A. 111.

Terms of note not varied by parol evidence showing installment privileges. *Nalitzky v. Williams*, 237 Fed. Rep. 802, 151 C. C. A. 44.

Contract not in writing not to vary terms of note. *Hitchings, etc., Co. v. Northern Leather Co. (1914)*, 3 K. B. 907.

Where payee indorsed bill of exchange and handed to bank for discount the property therein did not pass until discounted. *Dawson v. Isle (1906)*, 1 Ch. 633.

1a. The following is a complete lists of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—Bank of Tallasee v. Jordan (1917), 75 So. 930; Norwood v. Stinnett (1919), 80 So. 431; Bank of Cartersville v. Gunter, 4 Ala. App. 539, 58 So. 757; Stone v. Goldberg & Lewis (1912), 6 Ala. App. 249, 60 So. 744; Bledsoe v. City Nat. Bk. of Selma (1912), 7 Ala. App. 195, 60 So. 942; Goldberg v. Stone, 191 Ala. 356, 67 So. 839; Haas v. Commerce Tr. Co. (1915), 69 So. 984; Citizens Nat. Bank v. Bucheit (1916), 71 So. 82.

*Arizona*.—Gray v. Baron (1910), 13 Ariz. 70, 108 Pac. 229; Fidelity Title Guaranty Co. v. Ruby, 16 Ariz. 75, 141 Pac. 117.

*Arkansas*.—Ard v. Bowie (1916), 125 Ark. 169, 187 S. W. 1066; Horn v. Brand (1918), 203 S. W. 5.

*Colorado*.—Sayre v. Leonard (1914), 57 Colo. 116, 140 Pac. 196; Devine v. Western Slope Assn., 27 Colo. App. 368; Norman v. McCarthy, 56 Colo. 290, 138 Pac. 28.

*Delaware*.—Wilmington Trust Co. v. Morgan, 28 Del. 261, 92 Atl. 988.

*Connecticut*.—Atwood v. Atwood (1913), 86 Atl. 29.

*Florida*.—Bland v. Fidelity Trust Co. (1916), 71 So. 630; Donegan v. Dekle Inv. Co. (1917), 74 So. 11; Williams v. Peninsular Grocery Co. (1917), 75 So. 517.

*Idaho*.—Lewis County v. State Bank of Peck, — Ida. —, 170 Pac. 98.

*Illinois*.—Shipley v. Carroll, 45 Ill. 285; Clarke v. Johnson, 54 Ill. 296; Strauss v. Citizen's St. Bank of Elmhurst (1911), 164 Ill. App. 420; Burr v. Beckler, 264 Ill. 230, 106 N. E. 206, L. R. A. 1916A, 1049.

*Iowa*.—Selma Sav. Bank v. Harlan (1914), 167 Iowa 673, 149 N. W. 882; Roy v. Duff (1915), 152 N. W. 606; Rule v. Carey (1916), 159 N. W. 699; Waukee Sav. Bank v. Jones, 179 Iowa 261, 159 N. W. 691.

*Kansas*.—Wood v. Bank of Whitewater (1914), 91 Kans. 522; Bartholomew v. Fell, 92 Kans. 64, 139 Pac. 1016; Goutermont v. Bland, 99 Kan. 431, 162 Pac. 270; Commercial Nat. Bank v. Hutchinson Box Co., 98 Kan. 350, 158 Pac. 44; Stevens v. Inch, 98 Kan. 306, 158 Pac. 43.

*Kentucky*.—Key v. Usher (1907), 30 Ky. L. R. 667, 99 S. W. 324.

*Massachusetts*.—Mass. Nat. Bank v. Snow (1905), 187 Mass. 159, 72 N. E. 959; Hill v. Hall, 191 Mass. 253, 77 N. E. 831; Stouffer v. Curtis (1908), 198 Mass. 560, 85 N. E. 180; Buzzell v. Tobin (1909), 201 Mass. 1, 86 N. E. 923; Liberty Trust Co. v. Tilton, 217 Mass. 462, 464, 105 N. E. 605, L. R. A. 1915B, 144; National Investment Co. v. Corey, 222 Mass. 453, 111 N. E. 357.

*Michigan*.—Gen. Conf. Assn. etc. v. Mich. Sanitarium (1911), 166 Mich. 504; Sheffer v. Fleischer, 158 Mich. 270, 122 N. W. 543; City of Adrian v. Whitney Central Nat. Bank, 180 Mich. 171, 146 N. W. 654.

*Minnesota*.—Behrens v. Kruse (1916), 132 Minn. 69, 155 N. W. 1065.

*Mississippi*.—Homes Bros. v. McCall (1916), 74 So. 786.

*Missouri*.—Semmes & Co. v. Barnett (1916), 190 S. W. 394; Chandler v. Hedrick, 187 Mo. App. 664, 173 S. W. 93.

*New Jersey*.—Borough of Montvale v. People's Bank (1907), 74 N. J. Law 464, 67 Atl. 67; Linbarger v. Board of Education of West N. Y. (1912), 83 N. J. L. 446, 85 Atl. 235.

*New York*.—Greaser v. Sugarman (1902), 76 N. Y. Supp. 922, 37 Misc. Rep. 799; Poess v. Twelfth Ward Bank (1904), 43 Misc. 45, 86 N. Y. Supp. 857; Moak v. Stevens (1904), 45 Misc. Rep. 147, 91 N. Y. Supp. 903; Colburn v. Arbecan (1907), 54 Misc. 623, 104 N. Y. Supp. 926; Madden v. Gaston (1910), 137 A. D. 294, 121 N. Y. Supp. 951; Linick v. Nutting (1910), 125 N. Y. Supp. 93; Pfister v. Heins (1910), 136 A. D. 457; Stoughton v. Chu Fong (1911), 130 N. Y. Supp. 228; Niblock v. Sprague (1911), 200 N. Y. Supp. 390; Smith v. Dotterweich (1911), 200 N. Y. 299, 93 N. E. 985, 33 L. R. A. (N. S.) 829; In re Marine (1912), 140 N. Y. Supp. 230; Yonker's Nat. Bank v. Michell (1913), 141 N. Y. Supp. 128; Senft v. Schaeffer (1913), 142 N. Y. Supp. 380, 81 Misc. 152; Flood v. Steinmetz (1915), 153 N. Y. Supp. 192; Holzman, Cohen & Co. v. Teague (1915), 156 N. Y. Supp. 290; Schaeffer v. Marsh (1915), 90 Misc. Rep. 307, 153 N. Y. Supp. 96; Weinhandler v. Loewenthal, 159 N. Y. Supp. 695; Empire Trust Co. v. Manhattan Co. (1916), 162 N. Y. Supp. 629; Bloom v. Horwitz, 97 Misc. Rep. 622, 162 N. Y. Supp. 230; Holtzman, Cohen & Co. v. Teague (1916), 158 N. Y. Supp. 211; Empire Trust Co. v. President & Directors Man Co. (1917), 162 N. Y. Supp. 629; Dalrymple v. Schwartz (1917), 164 N. Y. Supp. 496; Rubel v. Honig, 178 App. Div. 53 (1917), 164 N. Y. Supp. 219; Grannis v. Stevens, 216 N. Y. 583, 111 N. E. 263; Niblock v. Sprague, 200 N. Y. 390, 93 N. E. 1105.

*North Dakota*.—Viets v. Silver, 15 N. Dak. 51, 106 N. W. 35; First State Bank of Eckman v. Kelly (1915), 30 N. Dak. 84, 152 N. W. 125; Stockton v. Turner (1915), 152 N. W. 275; Marlatt v. Coulture (1919), 169 N. W. 582; First Nat. Bank v. Miller, 179 N. W. 997.

*North Carolina*.—Cherokee Co. v. Meroney, 173 N. C. 653, 92 S. E. 616; Farrington v. McNeil, 174 N. C. 420, 93 S. E. 957.

*Oklahoma*.—Gamble v. Riley (1913), 39 Okla. 363, 135 Pac. 390; Critser v. Steeley (Okla.), 162 Pac. 795; Bailey v. Lankford (Okla.), 154 Pac. 672.

*Oregon*.—Gress v. Wessinger (1918), 172 Pac. 495; Louis County v. Bank of Peck (1918), 170 Pac. 98.

*Pennsylvania*.—First Nat. Bank v. McBride (1911), 230 Pac. 261; Lincoln Nat. Bank of Pittsburg v. Miller (1917), 100 Atl. 269, 255 Pa. 467; Homewood Peoples' Bank v. Heckert, 207 Pa. 231, 56 Atl. 431.

*Rhode Island*.—Lee v. Benjamin (R. I.), 102 Atl. 713.

*South Carolina*.—Commercial Security Co. v. Donnalld Drug Co. (1918), 96 S. E. 529.

*South Dakota*.—Piper v. Hagen (1914), 146 N. W. 692; Larson v. Sequin (1914), 149 N. W. 174.

*Utah*.—Martineau v. Hanson, 47 Utah. 549, 155 Pac. 432; Smith v. Brown (1917), 165 Pac. 468; Bank v. Pahvent Valley Land Co. (Utah), 165 Pac. 462.

*Washington*.—*Post v. Tamm*, 91 Wash. 504, 158 Pac. 91; *Angus v. Downs* (1915), 147 Pac. 630, 85 Wash. 75, L. R. A. 1915E, 351; *Morris-Miller Co. v. Von Pressentin*, 63 Wash. 74, 114 Pac. 912; *Seattle National Bank v. Becker*, 74 Wash. 431, 133 Pac. 613; *Gwin v. Ford*, 85 Wash 571, 148 Pac. 891.

*Wisconsin*.—*Schultz v. Kosbab* (1905), 125 Wis. 157; *Hodge v. Smith* (1907), 130 Wis. 326, 110 N. W. 192; *Paulson v. Boyd* (1908), 137 Wis. 241, 118 N. W. 841; *U. S. Investment Co. v. Epley* (1916), 164 Wis. 438, 160 N. W. 175; *Harder v. Reinhardt*, 162 Wis. 558, 156 N. W. 959.

*United States*.—*Continental Engine Co., In re*, 234 Fed. Rep. 58, 148 C. C. A. 74; *Nalitzky v. Williams*, 237 Fed. Rep. 802, 151 C. C. A. 44; *United States v. Chase Nat. Bank* (1917), 241 Fed. 535; *Storey v. Storey*, 131 C. C. A. 269, 214 Fed. 973; *Town of Newburn v. National Bank*, 234 Fed. 209, 148 C. C. A. 111.

§ 17. Construction where instrument is ambiguous. Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount.

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.<sup>1, 2a</sup>

See text, § 299.

Cross sections: 64, 63.

In North Carolina subsection 2 is omitted and transferred to another section of the law.

The Wisconsin act (No. 1675-17) adds another subdivision, viz.: "8. Where several writings are executed at or about the same time, as parts of the same transactions, intended to accomplish the same object, they may be construed as one and the same instrument as to all parties having notice thereof."

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

Purpose for which signature placed on note. *Pineland Realty Co. v. Clements*, — La. —, 88 So. 818.

Joint and several note holder may proceed against one in equity and the other at law. *Lewenstein v. Forman*, 223 Mass. 325, 111 N. E. 962.

If doubt whether instrument is a bill or note, holder may treat it as either. *Didato v. Coniglio*, 50 Misc. Rep. 280, 100 N. Y. Supp. 466.

Negotiable if blank left for rate of interest. *Franklin Nat. Bank v. Roberts Bros.*, 168 N. C. 473, 84 S. E. 706.

One signing instrument and not otherwise showing is an indorser. *Krumm v. El Reno State Bank*, — Okla. —, 201 Pac. 364.

Parol evidence not admissible to show that one intended to sign as an indorser where he signs in place of maker. *Lumbermen's Nat. Bank of Portland v. Campbell*, 61 Ore. 123, 121 Pac. 427.

Although not signing as an indorser held to be an indorser by intentment. *Moore v. Carey*, 138 Tenn. 332, 197 S. W. 1093.

Parol evidence admissible to show corporation signed as surety. *Spencer v. Alki Point Transportation Co.*, 53 Wash. 77, 101 Pac. 509.

Where signature does not indicate capacity person intended to sign, it is as indorser. *Bank of California v. Starrett*, — Wash. —, 188 Pac. 410.

One signing in place of maker's name is not an indorser. *Germania Nat. Bank v. Mariner*, 129 Wis. 544, 109 N. W. 574.

Where ambiguity as to written and typewritten the writing prevails and note is not uncertain. *Acme Coal Co. v. Northrup Nat. Bank*, 23 Wyo. 66, 146 Pac. 593, L. R. A. 1915D, 1084.

<sup>2a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Bell v. Birmingham* (1913), 9 Ala. App. 212, 62 So. 971; *Potter v. Tucker* (1914), 66 So. 922; *Turner v. Turner* (1915), 69 So. 503; *Long v. Givin* (1919), 80 So. 440.

*Colorado*.—*Ullery v. Brohm* (1905), 20 Colo. App. 389, 79 Pac. 180; *Milnen Bank & Trust Co. v. Whipple* (1916), 156 Pac. 1098.

*Connecticut*.—*Proctor v. Banby*, 90 Conn. 251, 96 Atl. 935.

*Illinois*.—*Illinois v. Lewinger* (1911), 252 Ill. 332, 96 N. E. 837, Ann. Cas. 1912D, 239; *Burr v. Beckler* (1914), 106 N. E. 206, 264 Ill. 230.

*Iowa*.—*Porter v. Moles* (1911), 151 Iowa 279, 131 N. W. 23.

*Kentucky*.—*Mechanics & Farmer's Sav. Bank v. Katterjohn* (1910), 137 Ky. 427, 125 S. W. 1071.

*Louisiana*.—*J. I. Case Threshing Machine Co. v. Bridger* (1913), 133 La. 754, 63 So. 319; *Pineland Realty Co. v. Clements*, — La. —, 88 So. 818.

*Massachusetts*.—*Lewenstein v. Forman* (1916), 223 Mass. 325, 111 N. E. 962.

*Minnesota*.—*Spiering v. Spiering* (1917), 164 N. W. 583.

*Missouri*.—*Bank of Houston v. Day* (1909), 122 S. W. 756, 145 Mo. App. 410.

*Nebraska*.—*Hornstein v. Clifuno* (1910), 86 Neb. 103.

*New Mexico*.—*Hill v. Hart* (1917), 167 Pac. 710.

*New York*.—*Didato v. Coniglio* (1906), 100 N. Y. Supp. 466, 50 Misc. 280; *Tanner's Nat. Bank v. Lacs* (1909), 136 A. D. 92, 120 N. Y. Supp. 669; *Van Vliet v. Kanter* (1910), 124 N. Y. Supp. 63.

*North Carolina*.—*Franklin Nat. Bank v. Roberts Bros.*, 168 N. C. 473, 84 S. E. 706.

*Ohio*.—*Dollar Sav. Bank v. Barberton Pottery Co.* (1907), 17 Ohio Dec. 539.

*Oklahoma*.—*Critser v. Steley* (1917), 162 Pac. 795; *Krumm v. El Reno State Bank*, — Okla. —, 201 Pac. 364.

*Oregon*.—*Lumberman's Nat. Bank of Portland v. Campbell* (1912), 61 Oreg. 123, 121 Pac. 427; *Anderson v. Stayon State Bank* (1916), 82 Ore. 357, 159 Pac. 1033.

*Rhode Island*.—*Deahey v. Choquet* (1907), 28 R. I. 338.

*Tennessee*.—*Moore v. Carey* (1917), 138 Tenn. 332, 197 S. W. 1093.

*Washington*.—*Spencer v. Alki Point Transp. Co.* (1909), 53 Wash. 77, 101 Pac. 509; *Pease v. Syler* (1914), 138 Pac. 310; *Churchill v. Miller* (1916), 90 Wash. 694, 156 Pac. 851; *Smith v. Doty* (1916), 157 Pac. 881; *Bank of California v. Starrett*, 188 Pac. 410.

*Wisconsin*.—*Germania Nat. Bank v. Mariner* (1906), 129 Wis. 544, 109 N. W. 574.

*Wyoming*.—*Acme Coal Co. v. Northrup Nat. Bank of Iola* (1915), 23 Wyo. 66, 146 Pac. 593, L. R. A. 1915D, 1084.

§ 18. **Liability of person signing in trade or assumed name.**  
No person is liable on the instrument whose signature does not appear thereon except as herein otherwise expressly provided.

But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.<sup>1, 1a</sup>

See text, § 44.

Cross sections: 42, 49.

Corresponding provisions of English Bills of Exchange Act: 23, (1), (2).

Wyoming omits the word "expressly" in the first sentence."

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

Condition in note payable on demand did not affect its negotiability. *Goodfellow v. Farnham*, — Mass. —, 128 N. E. 776.

Liability of person who does not sign note. *Young v. Bray*, 54 Mont. 415.

Only partner who signed held to be liable. *Logan v. Parson*, 79 Ore. 381, 155 Pac. 365.

When a note is signed in the firm name by "A, member of the firm authorized to sign the firm name," all partners are liable. *Frazier v. Cottrell*, 82 Ore. 614, 162 Pac. 834.

Not pertinent to an oral guaranty by the payee. *Swenson v. Stolz*, 36 Wash. 318, 78 Pac. 999.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Kansas*.—*New York L. Ins Co. v. Martindale* (1907), 75 Kans. 142, 88 Pac. 559, 121 Am. St. 362.

*Massachusetts*.—*Goodfellow v. Farnham*, 128 N. E. 776.

*Missouri*.—*Mineral Belt Bank v. Elking Lead & Zinc Co.* (1913), 158 S. W. 1066.

*Montana*.—*Kohrs v. Smith* (1912), 45 Mont. 467, 124 Pac. 275; *Young v. Bray* (1918), 170 Pac. 104; *First Nat. Bank v. Cottonwood Land Co.*, 51 Mont. 544, 154 Pac. 582.

*Oregon*.—*Logan v. Parson*, 79 Ore. 381, 155 Pac. 365; *Gardner v. Wiley* (1905), 46 Oreg. 96, 79 Pac. 341; *Frazier v. Cottrell*, 82 Ore. 614, 162 Pac. 834.

*Washington*.—*Seattle Shoe Co. v. Packard* (1906), 43 Wash. 527, 86 Pac. 845, 117 Am. St. 1064; *Swenson v. Stoltz*, 36 Wash. 318, 78 Pac. 999.

*Wisconsin*.—*Frailing v. Sicher* (1919), 169 N. W. 607.

*United States*.—*In re Robson* (1914), 218 Fed. 452 (C. C. A., 2d Ct.)

§ 19. Signature by agent; authority; how shown. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.<sup>1, 1a</sup>

See text, §§ 44, 33.

The Kentucky act reads: "The signature of any party may be made by an agent duly authorized in writing."

Construing corresponding provision of English Bills of Exchange Act: Sec. 91.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

In Kentucky the authority to execute a negotiable instrument must be in writing, but not to execute a non-negotiable instrument. *Finley v. Smith*, 165 Ky. 445, 177 S. W. 262, L. R. A. 1915F, 777.

Necessary to show authority of the agent to indorse. *Scotland County Nat. Bank v. Hohn*, 146 Mo. App. 699, 125 S. W. 539.

Matter of sufficient proof of authority is left to the common law. *Grant Co. State Bank v. N. W. Land Co.*, 28 N. D. 479, 150 N. W. 736.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Iowa*.—*Watts v. Savings Bank* (1917), 165 N. W. 897.

*Kansas*.—*New York L. Ins Co. v. Martindale* (1907), 75 Kans. 142, 88 Pac. 559, 121 Am. St. 362.

*Kentucky*.—*Finley v. Smith*, 165 Ky. 445, 177 S. W. 262, L. R. A. 1915F, 777.

*Massachusetts*.—*Stone v. Sergeant* (1915), 107 N. E. 1014.

*Missouri*.—*Houston v. Day* (1909), 145 Mo. App. 410; *Scotland Co. Nat. Bank v. Hohn* (1910), 146 Mo. App. 699, 125 S. W. 539; *Gage v. Bank of Holcomb* (1917), 196 S. W. 1077.

*Nebraska*.—*First Nat. Bank of Shenandoah v. Kelgord* (1912), 91 Neb. 178, 135 N. W. 548.

*New York*.—*Burstein v. People's Tr. Co.* (1911), 143 A. D. 165; *Burstein v. Sullivan* (1909), 134 A. D. 623; *Hubbard v. Syemite Trap Rock Co.* (1917), 165 N. Y. Supp. 486; *Standard Steam Spec Co. v. Corn Exch. Bank* (1917), 116 N. E. 386, 220 N. Y. 478.

*North Dakota*.—*Grant Co. State Bank v. N. W. Land Co.*, 28 N. D. 479, 150 N. W. 736.

*Washington*.—*Nat. Bank of Commerce of Seattle v. Puget Sound Biscuit Co.* (1910), 6 Wash. 192, 112 Pac. 265; *Citizens Nat. Bank v. Ariss* (1912), 68 Wash. 448; *Hanson v. Northern Bank & Trust Co.* (1917), 167 Pac. 97.

*United States*.—*Nat. Bank of Commerce in St. Louis v. Sancho Pag. Co.* (1911), 110 C. C. A. 112, 186 Fed. 257.

§ 20. **Liability of person signing as agent, etc.** Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describ-



ing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.<sup>1</sup> <sup>1a</sup>

See text, §§ 33, 125.

Cross sections: 17-6, 63, 64.

The Virginia act (§ 20) inserts after "capacity," "without disclosing his principal."

Construing corresponding provisions of English Bills of Exchange Act: Sec. 26 (1), (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Parties held individually liable contrary to general rule. *Briel v. Exchange National Bank*, 172 Ala. 475, 55 So. 808.

Evidence admitted to show relation. *Peabody School Furniture Co. v. Whitman*, 6 Ala. App. 182, 60 So. 470.

Held liable as individuals. *Briel v. Exchange Nat. Bank*, 180 Ala. 376, 61 So. 277.

Parol evidence admissible. *Planters Chemical, etc., Co. v. Stearns*, 189 Ala. 503, 66 So. 699.

Note with seal of company and signed by officers is note of the company. *New England Electric Co. v. Shook*, 27 Colo. App. 30, 145 Pac. 1002.

Name of company printed on note and signed "A. Pres." held note of company. *Second Bank v. Midland Co.*, 155 Ind. 581.

When signature to note is as agent or individual. *Flick v. Jordan*, — Ind. —, 129 N. E. 42.

Note held individual obligation and not of corporation. *Day v. Ramsdell*, 90 Iowa 731, 52 N. W. 208.

Personal note of maker, as no principal named. *Schumaker v. Dolan*, 154 Iowa 207, 134 N. W. 624.

Oral evidence not admissible to show note that of corporation. *McCandless v. Belle Plaine Co.*, 78 Iowa 161, 42 N. W. 635, 4 L. R. A. 396.

Personal and not corporate liability. *Exchange Bank v. Schultz*, 167 Iowa 136, 149 N. W. 99.

Evidence admissible to show note that of company. *Western Grocer Co. v. Lackman*, 75 Kan. 34, 88 Pac. 527.

By sections 20 and 58 construed together parol evidence admissible. *G. C. Riordan & Co. v. Thorsbury*, 178 Ky. 324, 198 S. W. 920.

Agent of undisclosed principal personally liable. *Dayries v. Lindsly*, 128 La. 259, 54 So. 791.

Proof required to show liability. *Belmont Dairy Co. v. Thresher*, 124 Md. 320, 92 Atl. 766.

Intention of parties to be carried out if possible. *Carpenter v. Farnsworth*, 106 Mass. 561.

Note held that of corporation. *Miller v. Roach*, 150 Mass. 140, 22 N. E. 634, 6 L. R. A. 71.

Estate not liable where name does not appear on note. *Tuttle v. First Nat. Bank of Greenfield*, 187 Mass. 533, 73 N. E. 560, 105 Am. St. Rep. 420.

Trustee individually liable if he had no authority to sign for the estate. *Dunham v. Blood*, 207 Mass. 512, 93 N. E. 804.

Under section 20 agent not liable if he describes himself as agent of a disclosed principal. *Jump v. Sparling*, 218 Mass. 324, 105 N. E. 878.

When evidence admissible in support of answer of signature in representative capacity. *Adams v. Swig*, — Mass. —, 125 N. E. 857.

Officer held liable as an individual. *Rudolph Wurlitzer Co. v. Rossman*, 196 Mo. App. 78, 190 S. W. 636.

Note ambiguous and parol evidence admissible to show whether it was signed as an individual. *Myers v. Chesley*, 190 Mo. App. 371, 177 S. W. 326.

Note signed "A Co., B, Prest.," held note of the corporation. *Reeve v. First Bank*, 54 N. J. L. 208, 23 Atl. 853, 16 L. R. A. 143.

Section 20 does not change the law in New Jersey, *Phelps v. Weber*, 84 N. J. L. 630, 87 Atl. 468.

Note signed by agent and corporation liable. *Crandall v. Robbins*, 83 App. Div. 618, 82 N. Y. Supp. 317.

Depends on knowledge of payee whether trustee is bound individually or otherwise. *Kerby v. Reugamer*, 107 App. Div. 491, 95 N. Y. Supp. 408.

As note was ambiguous evidence was admitted to show it was that of the company. *Dunbar Co. v. Martin*, 53 Misc. Rep. 312, 102 N. Y. Sup. 91.

Committee and officers not personally liable. *Chelsea Exch. Bank v. First United Presbyterian Church*, 89 Misc. Rep. 616, 152 N. Y. Supp. 201.

Trustee bound unless name of principal appears on note. *Megowan v. Peterson*, 173 N. Y. 1, 65 N. E. 738.

Agent of disclosed principal. *Somers v. Hanson*, 78 Ore. 429, 153 Pac. 43.

Parol evidence held admissible and not contrary to section 20. *Birmingham Iron Foundry v. Regnery*, 33 Pa. Super Ct. 54.

Name of company at top of note and signed by secretary and treasurer is note of company. *Chatham Nat. Bank v. Gardner*, 31 Pa. Super Ct. 135.

Agent of undisclosed principal held to be personally liable. *Grange Trust Co. v. Brown*, 49 Pa. Super. Ct. 274.

Note signed by trustees of church and church liable. *Wilson v. Clinton Chapel, etc., Church (Tenn.)*, 198 S. W. 244.

Name of company printed on a receipt form and signed by secretary and treasurer is a note of the two individuals. *Daniel v. Glidden*, 38 Wash. 556, 80 Pac. 811.

Note of a firm when name appears. *Citizens Nat. Bank v. Ariss*, 68 Wash. 448, 123 Pac. 593.

Signature as in a representative capacity does not bind the maker as an individual. *First Natl. Bank of Salem v. Jacobs*, — W. Va. —, 102 S. E. 491.

Joint note of corporation and individuals. *Nunnemaker v. Poss*, 116 Wis. 444.

Ambiguous and parol evidence admissible. *Germania Nat. Bank v. Mariner*, 129 Wis. 544, 109 N. W. 574.

Section 20 is not opposed to parol evidence. *American Trust Co. v. Canevin*, 184 Fed. Rep. 657, 107 C. C. A. 543.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—Briel v. Ex. Nat. Bank (1911), 172 Ala. 475, 55 So. 808; Briel v. Exchange Nat. Bank, 180 Ala. 576, 61 So. 277; Peabody School Furniture Co. v. Whitman (1912), 6 Ala. App. 182, 60 So. 470; Planters Chemical, etc., Co. v. Stearns, 189 Ala. 503, 66 So. 699.

*Arkansas*.—Corning v. Nimnich (1916), 183 S. W. 756.

*Colorado*.—New England Electric Co. v. Shook (1915), 27 Colo. App. 30, 145 Pac. 1002.

*Connecticut*.—Pascucci v. Rossi (1917), 101 Atl. 22.

*Indiana*.—Bayh v. Hanna (1919), 122 N. E. 7; Second Bank v. Midland Co., 155 Ind. 581; Flick v. Jordan, 129 N. E. 42.

*Iowa*.—Schumacher v. Dolan (1912), 54 Iowa 207, 134 N. W. 624; Exch. Bank of Marcus v. Schults (1914), 167 Iowa 136, 149 N. W. 99; McCandless v. Bell Plaine Co., 78 Iowa 161, 42 N. W. 635, 4 L. R. A. 396; Day v. Ramsdell, 90 Iowa 731, 52 N. W. 208.

*Kansas*.—Weston Grocer Co. v. Lackman (1907), 75 Kans. 34, 88 Pac. 527; Bateman v. Sarback (1914), 89 Kans. 488.

*Kentucky*.—G. C. Riordan & Co. v. Thornsby, 178 Ky. 324, 198 S. W. 920.

*Louisiana*.—Bayries v. Lindsly (1911), 128 La. 259, 54 So. 791.

*Maryland*.—First Denton Nat. Bank v. Kenney (1911), 116 Md. 124, 81 Atl. 227, Ann. Cas. 1913B, 1337; Belmont Dairy Co. v. Thrasher (1914), 92 Atl. 766, 124 Md. 320.

*Massachusetts*.—Carpenter v. Farnsworth, 106 Mass. 561; Miller v. Roach, 150 Mass. 140, 22 N. E. 634, 6 L. R. A. 71; Tuttle v. First Nat. Bank of Greenfield (1905), 187 Mass. 533, 73 N. E. 560, 105 Am. St. Rep. 420; Dunham v. Blood (1911), 207 Mass. 512, 93 N. E. 804; Jump v. Sparling, 218 Mass. 324, 105 N. E. 878; Adams v. Swig, — Mass. —, 125 N. E. 857.

*Missouri*.—Myers v. Chesley, 190 Mo. App. 371, 177 S. W. 326; Wur-litzer Co. v. Rossman, 196 Mo. App. 78, 190 S. W. 636.

*Nebraska*.—First Nat. Bank of Shenandoah v. Kelgord (1912), 91 Neb. 178, 135 N. W. 548.

*New Jersey*.—Reeve v. First Bank, 54 N. J. L. 208, 23 Atl. 853, 16 L. R. A. 143; Phelps v. Weber (1913), 84 N. J. L. 630, 87 Atl. 468.

*New York*.—Crandall v. Robbins, 83 App. Div. 618, 82 N. Y. Supp. 317; C. N. Bank v. Clark, 139 N. Y. 307; First Nat. Bank v. Wallis, 150 N. Y. 455; Chelsea Exch. Bank v. First United Presbyterian Church, 89 Misc. Rep. 616, 152 N. Y. Supp. 201; Megowan v. Peterson (1902), 173 N. Y. 1, 65 N. E. 738; Kerby v. Ruegamer (1905), 107 A. D. 491, 95 N. Y. Supp. 408; Dunbar Co. v. Martin (1907), 53 Misc. Rep. 312, 102 N. Y. Supp. 91; Burstein v. Sullivan (1909), 134 A. D. 623; The Van Norton Tr. Co. v. L. Rosenberg, Inc. (1909), 62 Misc. 285, 114 N. Y. Supp. 1025; Burstein v. People's Tr. Co. (1911), 143 A. D. 165; International Trust Co. v. Caroline (1912), 137 N. Y. Supp. 932.

*Oregon*.—Page v. Ford (1913), 65 Ore. 450, 131 Pac. 1013, Ann Cas. 1915A, 1048; Somers v. Hanson, 78 Ore. 429, 153 Pac. 43.

*Pennsylvania*.—Chatham Nat. Bank v. Gardner (1906), 31 Pa. Super. Ct. 135; Birmingham Iron Foundry v. Regnery (1907), 33 Pa. Super. Ct. 54; Grange Trust Co. v. Brown (1911), 49 Pa. Super. Ct. 274.

*Tennessee*.—Wilson v. Clinton Chapel, Zion Church (1917), 198 S. W. 244.

*Washington*.—Daniel v. Glidden (1905), 38 Wash. 556, 80 Pac. 111; Citizens Nat. Bank v. Ariss (1912), 68 Wash. 448, 123 Pac. 593.

*West Virginia*.—Dollar Sav. & Gr. Co. v. Crawford (1911), 70 S. E. 1089; First Nat. Bank of Salem v. Jacobs, 102 S. E. 491.

*Wisconsin*.—Nunnemaker v. Poss, 116 Wis. 444, 92 N. W. 375; Germania Nat. Bk. v. Mariner (1906), 129 Wis. 544, 109 N. W. 574.

*United States*.—Am. Trust Co. v. Canevin (1911), 184 Fed. Rep. 657, 107 C. C. A. 543; Nat. Bank of Commerce in St. Louis v. Sancho Packing Co. (1911), 110 C. C. A. 112, 186 Fed. 257.

**§ 21. Signature by procuration; effect of.** A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.<sup>1, 1a</sup>

See text, §§ 44, 33.

Construing corresponding provision of English Bills of Exchange Act: Sec. 25.

In the Illinois Act the word "only" in the above section is omitted.

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

Check drawn in excess of authority and company not bound. Reid v. Rigby & Co. (1894), 2 Q. B. 40.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Arkansas*.—Schaap v. State Nat. Bank of Texarkana (1919), 208 S. W. 309.

*New Jersey*.—R. M. Owen & Co. v. Storms & Co. (1909), 78 N. J. L. 154, 72 Atl. 441.

**§ 22. Effect of indorsement by infant or corporation.** The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding

ing that from want of capacity the corporation or infant may incur no liability thereon.<sup>1, 1a</sup>

See text, §§ 24, 123.

Cross sections: 29, 66.

1—This section construed:

Corresponding provision of English Bills of Exchange Act: 22 (2); 22 (2).

In North Carolina this section in a modified form was transferred to another article or chapter. The words "or married woman" are inserted after the word "infant" in both places.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

When indorsed by a corporation. *Willard v. Crook*, 21 App. D. C. 237.

Infant may disaffirm. *Murray v. Thompson*, 136 Tenn. 118, 188 S. W. 578, L. R. A. 1917B, 1172.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Citizens Nat. Bank v. Bucheit* (1916), 71 So. 82.

*Minnesota*.—*Thorpe v. Cooley* (1918), 165 N. W. 265.

*New York*.—*Oppenheim v. Reigal Cigar Co.* (1904), 90 N. Y. 355.

*North Carolina*.—*Vance v. Bryan* (1912), 158 N. Car. 502, 74 S. E. 459.

*Tennessee*.—*Murray v. Thompson*, 136 Tenn. 118, 188 S. W. 578, L. R. A. 1917B, 1172.

*United States*.—*Willard v. Crook* (1903), 21 App. D. C. 237.

§ 23. Forged signature; effect of. Where a signature is forged or made without authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.<sup>1, 1a</sup>

See text, §§ 138, 44, 50.

The Illinois act omits the words "of the person whose signature it purports to be."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Misrepresentation as to identity. *Boatsman v Stockmen's Nat. Bank*, 56 Colo. 495, 138 Pac. 764, 50 L. R. A. (N. S.) 107.

An indorsement with intent to defraud by one who has the same name is a forgery. *Beattie v. Nat. Bank*, 174 Ill. 571, 51 N. E. 602.

Forgery by bookkeeper. *Hamblins Wizard Oil Co. v. U. S. Express Co.*, 265 Ill. 156, 106 N. E. 623.

Form of using rubber stamp may put one on inquiry as to forgery. *Swift & Co. v. Miller*, 62 Ind. App. 312, 113 N. E. 447.

Note not necessarily avoided as to those whose signatures are genuine. *Beem v. Farrell*, 135 Iowa 670, 113 N. W. 509.

Plaintiff being ignorant of prior forgeries may recover. *Grand Lodge v. State Bank*, 92 Kan. 876, 142 Pac. 974, L. R. A. 1915B, 815.

If instruments in suit are negotiable notes it is not material that value be expressly stated. *Goodfellow v. Farnham*, — Mass. —, 128 N. E. 776.

Forged endorsement of payee's name. *Miners' & Merchants' Bank v. St. Louis Smelting, etc., Co.* (Mo. App.), 178 S. W. 211.

The burden of proof is on the one who claims that the signature is genuine. *German-American Bank v. Barnes* (Mo. App.), 185 S. W. 1194.

One estopped to set up forgery by representing that everything was all right when shown the note. *Gluckman v. Darling*, 85 N. J. L. 457, 89 Atl. 1016.

Effect of fraudulent indorsement, by one not payee, upon holder in due course. *Montgomery Garage Co. v. Manufacturer's Liability Ins. Co.*, — N. J. —, 109 Atl. 296.

Payment to person intended although a mistaken identity. *First Nat. Bank v. American Exch. Nat. Bank*, 49 App. Div. 39, 63 N. Y. Supp. 58.

False representation as to ownership. *Sherman v. Corn Exchange Bank*, 91 App. Div. 84, 86 N. Y. Supp. 341.

Indorsement held not to be a forgery. *Salem v. Bank*, 110 App. Div. 636, 97 N. Y. Supp. 361.

Designation of payee by his official title. *Mercantile Nat. Bank v. Silverman*, 148 App. Div. 1, 132 N. Y. Supp. 1017, affirmed, 210 N. Y. 567.

Forged check deposited in bank. Burden on plaintiff to prove bank negligent in failing to collect. *Stein v. Empire Trust Co.*, 148 App. Div. 850, 133 N. Y. Supp. 517.

Check indorsed without authority. *Anglo-South American Bank v. Nat. City Bank*, 161 App. Div. 268, 146 N. Y. Supp. 457, affirmed 217 N. Y. 726.

Guaranty of indorsements when some of them forged. *Catskill Nat. Bank v. Lasher*, 84 Misc. Rep. 523, 147 N. Y. Supp. 641.

Liability of bank repaying on discovery of forgery. *Geering v. Metropolitan Bank*, 169 App. Div. 927, 156 N. Y. Supp. 582.

Effect of forged indorsement signature. *United Cigar Stores Co. v. American Raw Silk Co.*, 171 N. Y. Supp. 480.

Intent of bank when another person intended. *First Nat. Bank v. American Exch. Nat. Bank*, 170 N. Y. 88, 62 N. E. 1089.

Case of a traveler's check. *Sullivan v. Knauth*, 220 N. Y. 216, 115 N. E. 460, L. R. A. 1917F, 554.

Authority to stamp with rubber stamp departed from may amount to forgery. *Standard Steam Specialty Co. v. Corn Exchange Bank*, 220 N. Y. 478, 116 N. E. 386.

Forged indorsement does not pass title. *Slattery & Co. v. National City Bank of N. Y.*, 186 N. Y. S. 679.

The word "precluded" held to be synonymous with "estoppel." *Ols-gard v. Lemke*, 32 N. D. 551, 156 N. W. 102.

Negligence of bank holding paper under forged indorsement. *National Bank of Commerce v. First Bank of Coweta (Okla.)*, 152 Pac. 596.

Secretly placing carbon paper to obtain signature is a forgery. *Maurmair v. Nat. Bank of Commerce (Okla.)*, 158 Pac. 349.

Plaintiff may be liable if he makes a mistake in addressing letter containing commercial paper. *Weisberger Co. v. Barberton Savings Bank*, 84 Ohio St. 21, 95 N. E. 379, 34 L. R. A. (N. S.) 1101.

Imposter. *McHenry v. National Bank*, 85 Ohio St. 203, 97 N. E. 395, 38 L. R. A. (N. S.) 1111n.

One obtaining money by representing himself to be another. *Tol-man v. American Exch. Bank*, 22 R. I. 462, 48 Atl. 480.

Defendant precluded from setting up forgery by her son-in-law for whom she had executed a mortgage. *Denison-Gholson Dry Goods Co. v. Hill*, 135 Tenn. 60, 185 S. W. 723.

Wrong person but of the same name. *Heavey v. Commercial Nat. Bank*, 27 Utah 222, 75 Pac. 727.

Case of a firm note. *Pettyjohn v. Nat. Exchange Bank*, 101 Va. 111, 43 S. E. 203.

Forgery on draft. *Heim v. Neubert*, 48 Wash. 587, 94 Pac. 104.

Payment of forged notes to save from disgrace. *Murphy v. Estate of Skinner*, 160 Wis. 554, 152 N. W. 172.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*District of Columbia*.—*Central Nat. Bank v. Nat. Met. Bank*, 31 A. C. (D. C.) 391, (C. C. Dist. Col.) 35 Wash. Law Rep. 621.

*Colorado*.—*Boatsman v. Stockmen's Nat. Bank*, 56 Colo. 495, 138 Pac. 764, 50 L. R. A. (N. S.) 107.

*Illinois*.—*Beatti v. Nat. Bank*, 174 Ill. 571, 51 N. E. 602, *Hamlin's Wizard Oil Co. v. U. S. Express* (1914), 184 Ill. App. 493, 265 Ill. 156, 106 N. E. 623.

*Indiana*.—*Swift & Co. v. Miller*, 62 Ind. App. 312, 113 N. E. 447.

*Iowa*.—*Beem v. Farrell* (1907), 135 Iowa 670, 113 N. W. 509; *State ex rel. Carroll v. Corning St. Sav. Bk.* (1908), 139 Iowa 338, 115 N. W. 937; *Reints & DeBuhr v. Uhlenhop* (1910), 149 Iowa 284; *Ols-gard v. Lemke* (1916), 156 N. W. 102.

*Kansas*.—*Grand Lodge v. State Bank*, 92 Kan. 876, 142 Pac. 974, L. R. A. 1915B, 815.

*Kentucky*.—*Nat. City Bank v. Third Nat. Bank* (1910), 177 Fed. 136; *Jett v. Standafer* (1911), 143 Ky. 787, 137 S. W. 513.

*Massachusetts*.—*Murphy v. Met. Nat. Bank* (1906), 191 Mass. 159; *Blum Jro Sons v. Whipple* (1907), 194 Mass. 253, 120 Am. St. Rep.

553, 80 N. E. 501, 13 L. R. A. (N. S.) 211; *Boles v. Harding* (1909), 201 Mass. 103, 87 N. E. 481; *Jordan Marsh Co. v. Nat. Shawmut Bank* (1909), 201 Mass. 397, 87 N. E. 740; *Franklin Sav. Bank v. Framingham* (1912), 212 Mass. 92; *Newburyport v. First Nat. Bank of Boston* (1914), 216 Mass. 304; *Munroe v. Stanley* (1915), 107 N. E. 1012; *Goodfellow v. Farnham* (1920), — Mass. —, 128 N. E. 776.

*Michigan*.—*Lonier v. State Sav. Bank* (1907), 149 Mich. 483, 112 N. W. 1119.

*Missouri*.—*Rossi v. Nat. Bank*, 71 Mo. App. 150; *Mo. Lincoln Tr. Co. v. Third Nat. Bank of St. Louis* (1910), 154 Mo. App. 89; *Miners & Merch. Bank v. St. Louis Smelting & Refining Co.* (1915) (Mo. App.), 178 S. W. 211; *German-Am. Bank v. Barnes* (1916) (Mo. App.), 185 S. W. 1194.

*Montana*.—*First Nat. Bank of Miles City v. Barrett* (1916), 57 Pac. 951.

*Nebraska*.—*Hoffman v. Am. Ex. Nat. Bank* (1901), 96 N. W. 112.

*New Jersey*.—*Gluckman v. Darling* (1914), 85 N. J. L. 457, 89 Atl. 1016; *Montgomery Garage Co. v. Man. Liability Ins. Co.*, 109 Atl. 296.

*New York*.—*First Nat. Bank of Fort Worth v. Am. Ex. Nat. Bank* (1900), 49 A. D. 39, 63 N. Y. Supp. 58; *Critten v. Chemical Nat. Bank* (1902), 171 N. Y. 219; *Casey v. Pilkington* (1903), 83 App. Div. 91, 82 N. Y. Supp. 529; *Sherman v. The Corn Ex. Bank* (1904), 91 A. D. 84; 86 N. Y. Supp. 341; *Kearny v. Met. Trust Co.* (1905), 110 A. D. 236; *Salen v. Bank of the St. of N. Y.* (1906), 110 A. D. 636, 97 N. Y. Supp. 361; *Oriental Bank v. Gallo* (1906), 112 A. D. 360, 98 N. Y. Supp. 561; *Trust Co. of Am. v. Hamilton Bank* (1908), 127 A. D. 515, 112 N. Y. Supp. 84; *Cluett v. Conture*, 14 A. D. 830, 125 N. Y. Supp. 813; *Seaboard Nat. Bank of America* (1908), 193 N. Y. 26, 85 N. E. 829; *The Mercantile Nat. Bank of the City of N. Y. v. Silverman* (1911), 148 A. D. 1, 132 N. Y. Supp. 1017, 210 N. Y. 567; *Stein v. Empire Tr. Co.* (1912), 148 A. D. 850, 133 N. Y. Supp. 517; *Kobre v. Corn Exchange Bank* (1913), 139 N. Y. Supp. 890; *Hartford v. Greenwich Bank*, 157 A. D. 448, 142 N. Y. Supp. 387; *Anglo-South Am. Bank v. Nat. City Bank of N. Y.* (1914), 161 A. D. 268, 146 N. Y. Supp. 457; *Catskill Nat. Bank v. Lasher*, 84 Misc. Rep. 523, 147 N. Y. Supp. 641; *Standard Steam Specialty Co. v. Corn Ex. Bank* (1914), 146 N. Y. Supp. 181; *Wolfin v. Security Bank* (1915), 156 N. Y. Supp. 474; *Bergstrom v. Ritz-Carlton Hotel Co.* (1916), 157 N. Y. Supp. 959; *Standard Steam Spec. Co. v. Corn Exch. Bank* (1917), 116 N. E. 386, 220 N. Y. 478; *Monk v. 23d Ward Bank* (1917), 165 N. Y. Supp. 1055; *First Nat. Bank v. American Exchange Nat. Bank*, 170 N. Y. 88, 62 N. E. 1089; *Geering v. Metropolitan Bank*, 109 App. D. 927, 156 N. Y. Supp. 582; *Cohen v. L. Rittner, Inc.* (1918), 171 N. Y. Supp. 312; *United Cigar Stores Co. v. American Raw Silk Co.*, 171 N. Y. Supp. 480; *Sullivan v. Knauth*, 220 N. Y. 216, 115 N. E. 460, L. R. A. 1917F, 554; *Slattery & Co. v. National City Bank*, 186 N. Y. Supp. 679; *Gallo v. Brooklyn Savings Bank*, 199 N. Y. 222, 92 N. E. 633.

*North Dakota*.—*First Nat. Bank of Lisbon v. Bank of Wyndemere* (1906), 15 N. Dak. 299, 108 N. W. 546; *Stutsman County Bank v. Jones* (1917), 162 N. W. 402; *Olsgard v. Lemke*, 32 N. D. 551, 156 N. W. 102.

*Nebraska*.—*Hoffman v. American Exchange Bank*, 2 Nebr. (unofficial) 217, 96 N. W. 112.



*Ohio*.—Winters Nat. Bank v. Roberts (1909), 20 Ohio Dec. 690; The S. Weishberger Co. v. The Barbeton Sav. Bank Co. (1911), 84 Ohio St. 21, 95 N. E. 379, 34 L. R. A. (N. S.) 1101; McHenry v. The Old Citizens Nat. Bank (1911), 85 Ohio St. 203, 97 N. E. 395, 38 L. R. A. (N. S.) 1111n.

*Oklahoma*.—Maurman v. Nat. Bank of Commerce (Okla.), 158 Pac. 349; Turner v. Kimble (1913), 130 Pac. 563; National Bank of Commerce v. First National Bank of Coweta (Okla.), 152 Pac. 596.

*Oregon*.—First Nat. Bank of Cottage Grove v. Bank of Cottage Grove (1911), 59 Ore. 388, 117 Pac. 293.

*Pennsylvania*.—States v. First National Bank, 17 Pa. Super. Ct. 256; Land Title & Trust Co. v. Northwestern Bank, 196 Pa. 230, 46 Atl. 420; Tibby Bros. Glass Co. v. Farmers & Mech. Bank of Sharpsburg (1908), 200 Pa. 1; Cunningham v. First Nat. Bank of Indiana (1908), 219 Pa. 310; Falcomi v. Magee (1911), 47 Pa. Super. 560.

*Rhode Island*.—Tolman v. Am. Nat. Bank (1901), 22 R. I. 462, 48 Atl. 480.

*Tennessee*.—Knoxville Water Co. v. E. Tenn. Nat. Bank (1910), 123 Tenn. 364; Figures v. Fly, 137 Tenn. 358, 193 S. W. 117; Litchfield Shuttle Co. v. Cumberland Valley Nat. Bank (1916), 134 Tenn. 379, 183 S. W. 1006; Denison-Gholson Dry Goods Co. v. Hill, 135 Tenn. 60, 185 S. W. 723.

*Utah*.—Heavey v. Commercial Nat. Bank (1904), 27 Utah 222, 75 Pac. 727, 101 Am. St. Rep. 966; Warren v. Smith (1909), 35 Utah 455, 100 Pac. 1069; Simpson v. Denver & Rio Grande Co. (1913), 43 Utah 105, 134 Pac. 883, 46 L. R. A. (N. S.) 1164.

*Virginia*.—Pettyjohn v. Nat. Ex. Bank (1903), 101 Va. 111, 43 S. E. 203.

*Washington*.—Jamieson & McFarland v. Heim (1906), 43 Wash. 153, 86 Pac. 165; Heim v. Neubert (1908), 48 Wash. 587, 94 Pac. 104; Goodfellow v. First Nat. Bank (1913), 129 Pac. 90.

*Wisconsin*.—Murphy v. Estate of Skinner, 160 Wis. 554, 152 N. W. 172.

*United States*.—National City Bank v. Third National Bank, 177 Fed. Rep. 136, 100 C. C. A. 556.

## ARTICLE II.

### CONSIDERATION OF NEGOTIABLE INSTRUMENTS.

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|---|---|
| <p>§ 24. Presumption of consideration.<br/>25. What constitutes consideration.<br/>26. What constitutes holder for value.</p> | <p>§ 27. When lien on instrument constitutes holder for value.<br/>28. Effect of want of consideration.<br/>29. Liability of accommodation party.</p> |
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Sections 24 to 29 above are the sections used by the commissioners.

See table of corresponding sections of the Law in the various states and territories beginning on page 360.

§ 24. Presumption of consideration. Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.<sup>1, 2a</sup>

See text, § 64.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

A renewal note is without consideration when the original note was without consideration. *Hurley v. Wilky*, 18 Ariz. 45, 156 Pac. 83.

Indorsement to indemnify against loss on account existing liability of third person as consideration. *Griswold v. Morrison*, — Cal. App. —, 200 Pac. 62.

Maker is not concerned with the consideration for the indorsement. *Asiatic Tunnel Co. v. Stephenson* (Colo.), 165 Pac. 773.

When presumption as to consideration disappears. *Holley v. Smalley*, — D. C. —, 269 F. 694.

Delivery of check as gift as affecting consideration. *Zehner v. Zehner's Estate*, — Ind. App. —, 129 N. E. 244.

The presumption in this section is overcome by showing control or duress. *Maginnis v. McChesney*, 179 Iowa 563, 160 N. W. 50.

A renewal note is without consideration when the original note was without consideration, even though such renewal note extends the time of payment. *City Nat. Bank v. Mason* (Iowa), 165 N. W. 103.

Negotiable instrument deemed issued for valuable consideration. *Bain v. Ullerich*, — Ia. —, 177 N. W. 61.

This section applied to a bill of lading. *Scheuerman v. Monarch Fruit Co.*, 122 La. 55, 48 So. 647.

The signing and indorsing of a note for his personal debt by the president of a corporation in the name of the corporation shows a *prima*

*facie* good consideration. *Bear Creek Lumber Co. v. Second Nat. Bank*, 120 Md. 566, 87 Atl. 1084.

Renewal of a previous note which was without consideration is also without consideration. *Widger v. Baxter*, 190 Mass. 130, 76 N. E. 509, 3 L. R. A. (N. S.) 436n.

Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration. *Jennings v. Law*, 199 Mass. 124, 85 N. E. 157.

Renewal note without consideration when original note without consideration. *Seager v. Drayton*, 217 Mass. 571, 105 N. E. 461.

Presumption is of valid consideration of note. *Long v. Conn.* — Minn. —, 179 N. W. 644.

Valid consideration presumed where note transferred before maturity. *Despres, Bridges & Noel v. Hough Drug Co.*, — Miss. —, 86 So. 359.

Consideration as to one joint maker good as to all. *First Nat. Bank of Scribner v. Golder*, 89 Neb. 377, 131 N. W. 600.

Married woman's note for accommodation not validated by this section where statute prohibits her from becoming surety. *People's Nat. Bank v. Schepflin*, 73 N. J. Law 29, 62 Atl. 333.

The import of this section is not weakened by the omission of the words "for value received." *McLeod v. Hunter*, 29 Misc. Rep. 558, 61 N. Y. Supp. 73.

This section does not apply to non-negotiable instruments. *Deyo v. Thompson*, 53 App. Div. 9, 65 N. Y. Supp. 459.

"Value received" an acknowledgement of a sufficient consideration. *Hamilton v. Hamilton*, 127 N. Y. App. Div. 871, 112 N. Y. Supp. 10.

The instrument itself is *prima facie* evidence of consideration. *Gilpin v. Savage*, 112 N. Y. Supp. 802.

The Negotiable Instruments Law by repealing a former statute in New York now makes non-negotiable instruments not to import a consideration. *Kinsella v. Lockwood*, 79 Misc. Rep. 619, 140 N. Y. Supp. 513.

An allegation of the making of a note is sufficient without allegations of delivery or consideration. *First Nat. Bank v. Stallo*, 160 App. Div. 702, 145 N. Y. Supp. 747.

The words "value received" is an acknowledgment of the receipt of a consideration. *Owens v. Blackburn*, 161 N. Y. App. Div. 827, 146 N. Y. Supp. 966.

Words "value received" an acknowledgment of consideration. *Dubosque v. Munroe*, 168 App. Div. 821, 154 N. Y. Supp. 462.

Consideration presumed between depositor and his bank and want of consideration moving from the payees to the bank held immaterial. *Bobrick v. Second Nat. Bank*, 175 App. Div. 550, 162 N. Y. Supp. 147.

Allegation of consideration is not essential if making is alleged. *Abrahamson v. Steele*, 176 App. Div. 865, 163 N. Y. Supp. 827.

Words "value received" are not necessary to raise presumption of consideration. *Lasher v. Rivenburgh*, 181 N. Y. S. 818.

Guaranty held good though consideration itself not expressed in writing. *First Nat. Bank v. Hawkins*, 73 Ore. 186, 144 Pac. 131.

As to binding party under certain circumstances where no consideration. *Bank of Monticello v. Dooly*, 113 Wis. 590, 89 N. W. 490.

Waiver or discharge of a claim is a sufficient consideration. *Becker v. Noegel*, 165 Wis. 73, 160 N. W. 1055.

The burden is thrown upon the defendant not only of introducing some evidence of lack of consideration, but of ultimately establishing such lack of consideration by a preponderance of evidence.

The above proposition is supported in the following cases which cite this section of the law: *In re Estate of Chismore*, 175 Iowa 495, 157 N. W. 139; *First Presbyterian Church v. Dennis*, 178 Iowa 1352, 161 N. W. 183, L. R. A. 1917C, 1005; *Shaffer v. Bond*, 129 Md. 648, 99 Atl. 973; *Joveshof v. Rockey*, 58 Misc. Rep. 559, 109 N. Y. Supp. 818; *Piner v. Brittain*, 165 N. C. 401, 81 S. E. 462; *State Bank v. Morrison*, 85 Wash. 182, 147 Pac. 875.

The following cases are in accord with the above proposition, but do not cite this section: *Harley v. Wilky*, 18 Ariz. 45, 156 Pac. 83; *George J. Cooke Co. v. Pisano*, 174 Ill. App. 609; *Harney v. Lee*, 175 Ill. App. 250; *Brokaw v. McElvoy*, 162 Iowa 288, 143 N. W. 1087, 50 L. R. A. (N. S.) 841; *Teutonia Bank & Trust Co. v. Buhler*, 137 La. 5, 68 So. 194; *Columbian Conservatory v. Dickinson*, 158 N. C. 207, 73 S. E. 990.

The following cases are *contra* to the above proposition and it is submitted that they are incorrect as to the burden of proof: *Lombard v. Byrne*, 194 Mass. 236, 80 N. E. 489; *Seager v. Drayton*, 217 Mass. 571, 105 N. E. 461; *Connors Bros. v. Sullivan*, 220 Mass. 600, 108 N. E. 503; (the above three cases not citing this section nor section 28); *Bringman v. VanGlahn*, 71 App. Div. 537, 75 N. Y. Supp. 845; *Hardinge v. U. S. Zinc Co.*, 171 App. Div. 742, 157 N. Y. Supp. 852; *Abrahamson v. Steele*, 176 App. Div. 865, 163 N. Y. Supp. 827; *Spencer & Co. v. Brown*, 143 N. Y. Supp. 994; (these four New York cases cite this section, but not section 28); *Holbert v. Weber*, 36 N. D. 106, 161 N. W. 560; *Ginn v. Dolan*, 81 Ohio St. 121, 90 N. E. 141, 135 Am. St. Rep. 761, 18 Ann. Cas. 204; (the last two cases not citing this section); *Bank of Gorsham v. Welch*, 76 Ore. 272, 147 Pac. 534; (merely citing section 28); *First Nat. Bank v. Paff*, 240 Pa. 513, 87 Atl. 841; *Hudson v. Moon*, 42 Utah 377, 130 Pac. 774; (the last two cases not citing section 28).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Jones v. Bell* (1917), 77 So. 918; *Vogler v. Manson* (1917), 76 So. 117.

*Arizona*.—*Hurley v. Wilky*, 18 Ariz. 45, 156 Pac. 83.

*Arkansas*.—*Sins v. Everett* (1914), 168 S. W. 559; *Buckely v. Collins* (1915), 177 S. W. 920.

*California*.—*Molley v. Pierson* (1918), 174 Pac. 98; *Griswold v. Morrison*, — Cal. App. —, 200 Pac. 62.

*Colorado*.—*Asiatic Tunnel Co. v. Stephenson*, — Colo. —, 165 Pac. 773.

*Connecticut*.—*American Automobile Co. v. Perkins* (1910), 83 Conn. 520, 77 Atl. 954.

*Delaware*.—*Security Trust & Safe Dep. Co. v. Duross* (1913), 86 Atl. 209.

*District of Columbia*.—*Holley v. Smalley* (D. C.), 269 Fed. 694.

*Florida*.—*Williams v. Peninsular Grocery Co.* (1917), 75 So. 517.

*Idaho*.—*McFarland v. Johnson* (1912), 22 Ida. 694, 127 Pac. 908.

*Illinois*.—George J. Cooke Co. v. Pisano (1912), 174 Ill. App. 609; Harney v. Lee (1912), 175 Ill. App. 250.

*Indiana*.—Deiter v. Burke (1914), 107 N. E. 304; Zehner v. Zehner's Estate, 129 N. E. 244.

*Iowa*.—Zimbelman & Otis v. Finnegan (1909), 141 Iowa 358, 118 N. W. 312; Brokaw v. McElvoy (1913), 143 N. W. 1087; In re Estate of Chismore, 175 Iowa 495, 496, 157 N. W. 139, 140; Perry Sav. Bank v. Fitzgerald (1914), 149 N. W. 497; Magennis v. McChesney, 179 Iowa 563, 160 N. W. 50; First Presbyterian Church of Mt. Vernon v. Dennis (1917), 161 N. W. 183; Higby v. Bahrenfuss (1917), 163 N. W. 247; City Nat. Bank v. Mason, — Iowa —, 165 N. W. 103; Bain v. Ullerich, 177 N. W. 61.

*Kansas*.—Hawkins v. Windhorst (1910), 82 Kans. 522, 108 Pac. 805.

*Louisiana*.—Scheuerman v. Monarch Fruit Co. (1909), 122 La. 55, 48 So. 647; Teutonia Bank & Trust Co. v. Buhler, 137 La. 5, 68 So. 194.

*Maryland*.—Black v. First Nat. Bank (1903), 96 Md. 399, 54 Atl. 88; Louis Eckels & Sons Ice Mfg. Co. v. Cornell Economizer Co. (1912), 86 Atl. 38; Bear Creek Lumber Co. v. Second Nat. Bk. of Cumberland (1913), 120 Md. 566, 87 Atl. 1084; Shaffer v. Bond (1917), 129 Md. 648, 99 Atl. 972.

*Massachusetts*.—Widger v. Baxter, 190 Mass. 130, 76 N. E. 509, 3 L. R. A. (N. S.) 436n; Lombard v. Bryne (1907), 194 Mass. 236, 80 N. E. 489; Jennings v. Law (1908), 199 Mass. 124, 85 N. E. 157; Clemons Elec. Mfg. Co. v. Walton (1910), 206 Mass. 215; North Anson Lumber Co. v. Smith (1911), 209 Mass. 333; Young v. Hayes (1912), 212 Mass. 525; Harvey v. Squire (1914), 105 N. E. 355; Seager v. Drayton (1914), 217 Mass. 571, 105 N. E. 461; Comers v. Sullivan, 220 Mass. 600, 108 N. E. 503.

*Minnesota*.—Baxter v. Brandenburg (1917), 163 N. W. 517; Long v. Conn, 179 N. W. 644.

*Mississippi*.—Despres, Bridges & Noel v. Hough Drug Co., 86 So. 359.

*Missouri*.—Rhodes v. Guhman (1911), 156 Mo. App. 344; Nelson v. Diffenderffer (1914), 163 S. W. 271; Miller v. Chinn (1917), 195 S. W. 552.

*Montana*.—Ford v. Drake (1912), 46 Mont. 314.

*Nebraska*.—First Nat. Bank of Scribner v. Golder (1911), 89 Neb. 377, 131 N. W. 600; Stannard v. Orleans Flour & Oat Meal Milling Co. (1913), 93 Neb. 389.

*New Jersey*.—People's Nat. Bank v. Schepflin (1905), 73 N. J. L. 29, 62 Atl. 333; McCormack v. Williams, 88 N. J. L. 170, 95 Atl. 978; Marine Tr. Co. v. St. James African M. E. Church (1913), 88 Atl. 1075; Bank of Roselle v. Dorvall (1916), 98 Atl. 476.

*New York*.—Riverside Bank v. Woodhaven Junction Land Co. (1898), 34 A. D. 359; McLeod v. Hunter (1899), 29 Misc. 558, 61 N. Y. Supp. 73; Deyo v. Thompson (1900), 53 A. D. 9, 65 N. Y. Supp. 459; Bringman v. Glahn (1902), 71 A. D. 537, 75 N. Y. Supp. 845; Karsch v. Pottier & Stymers Mfg. & Imp. Co. (1903), 81 N. Y. 782, 82 A. D. 230; Packard

v. Windholz (1903), 40 Misc. 347, affirmed 88 A. D. 365; Moak v. Stevens (1904), 45 Misc. 147, 91 N. Y. Supp. 903; The Royal Bank of N. Y. v. Goldschmidt (1906), 51 Misc. 622, 101 N. Y. Supp. 101; Ward v. City Tr. Co. of N. Y. (1907), 102 N. Y. Supp. 50; Cleary v. DeBeck Plate Glass Co. (1907), 54 Misc. 537, 104 N. Y. Supp. 831; Colborn v. Arbean (1907), 54 Misc. 623, 104 N. Y. Supp. 968; Hickok v. Bunting, 92 App. Div. 167, 86 N. Y. Supp. 1059; Benedict v. Kress, 97 A. D. 65, 89 N. Y. Supp. 607; Joveshoff v. Rockney (1908), 109 N. Y. Supp. 818, 58 Misc. 559; Nat. Park Bank v. Saitta (1908), 127 App. Div. 624, 111 N. Y. Supp. 927; Hamilton v. Hamilton, 127 N. Y. App. Div. 871, 112 N. Y. Supp. 10; Pfister v. Heins (1910), 136 A. D. 457; Ferguson v. Netter (1910), 141 A. D. 274; Ryan v. Sullivan (1911), 143 A. D. 471; Kinsella v. Lockwood, 79 Misc. Rep. 619, 140 N. Y. Supp. 513; Glennan v. Rochester Tr. & Safe Dep. Co. (1912), 136 N. Y. Supp. 747; First Nat. Bank of Pittsburg v. Stallo (1914), 160 App. Div. 702, 145 N. Y. Supp. 747; Spencer & Co. v. Brown, 143 N. Y. Supp. 994; Owens v. Blackburn, 161 N. Y. App. Div. 827, 146 N. Y. Supp. 966; Gerli v. Doorly (1915), 151 N. Y. Supp. 574; Schultz v. Cohen (1915), 156 N. Y. Supp. 610; Bobrick v. Second Nat. Bank, 175 App. Div. 550, 162 N. Y. Supp. 147; Abrahamson v. Steel (1917), 176 App. Div. 865, 163 N. Y. Supp. 827; Hardinge v. U. S. Zinc Co., 157 N. Y. Supp. 852, 171 A. D. 742; DuBosque v. Munroe, 168 App. Div. 821, 154 N. Y. Supp. 462; Lasher v. Rivenburgh, 181 N. Y. Supp. 818.

*North Carolina.*—Toms v. Jones (1900), 127 N. Car. 464; Myers v. Petty (1910), 153 N. Car. 462; Piner v. Brittain, 165 N. C. 401, 81 S. E. 462; Columbian Conservatory of Music v. Dickenson (1912), 758 N. Car. 207, 73 S. E. 990.

*North Dakota.*—Walters v. Rock (1908), 18 N. Dak. 45, 115 N. W. 511; Holbert v. Weber (1917), 36 N. D. 106, 161 N. W. 560.

*Ohio.*—Ginn v. Dolen (1909), 81 Ohio St. 121, 90 N. E. 141; Pierce v. Harper (1918), 249 Fed. 867.

*Oklahoma.*—Hudson v. Moore (1913), 130 Pac. 774.

*Oregon.*—Fassett v. Boswell (1911), 59 Oreg. 288, 117 Pac. 302; Long v. Hoedle (1911), 60 Oreg. 377, 119 Pac. 484; Bank of Gresham v. Welch, 76 Ore. 272, 147 Pac. 534; First Nat. Bank of Bangor v. Paff (1913), 87 Atl. 841; Adjustment Bureau of Portland Assn. of Credit Men v. Staats (1919), 175 Pac. 847; First Nat. Bank v. Hawkins, 73 Ore. 104, 144 Pac. 131.

*Pennsylvania.*—First Nat. Bank v. Paff, 240 Pa. 513, 87 Atl. 841.

*South Carolina.*—Cannon v. Clarendon Hardware Co. (1916), 88 S. E. 284.

*Utah.*—Cole Banking Co. v. Sinclair (1908), 34 Utah 454, 98 Pac. 411; Utah Nat. Bank of Salt Lake City v. Nelson (1910), 38 Utah 169, 111 Pac. 907; Niles v. U. S. Ozocinte Co. (1911), 38 Utah 367, 113 Pac. 1038; Hudson v. Moon, 42 Utah 377, 130 Pac. 774.

*Virginia.*—Lynchburg Milling Co. v. Nat. Ex. Bank of Lynchburg (1909), 109 Va. 639, 64 S. E. 9; Reid's Admr. v. Windsor (1911), 111 Va. 825, 69 S. E. 1101; Murphy's Hotel Co. v. Herndon's Admrs. (1917), 91 S. E. 634.

*Washington*.—*Nicholson v. Neavy* (1914), 137 Pac. 492; *State Bank of Clarkson v. Morrison* (1915), 85 Wash. 182, 147 Pac. 875.

*West Virginia*.—*Dollar Sav. & Gr. Co. v. Crawford* (1911), 70 S. E. 1089.

*Wisconsin*.—*Monticello v. Dooley*, 113 Wis. 590; *Becker v. Noegel*, 165 Wis. 73, 160 N. W. 1055.

*Wyoming*.—*Hamilton v. Diefenderfer* (1913), 21 Wyo. 26, 131 Pac. 37.

*United States*.—*Towles v. Tanner* (1903), 21 App. D. C. 530; *Nalitsky v. Williams* (1917), 237 Fed. 802.

§ 25. **Consideration; what constitutes.** Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.<sup>1, 1a</sup>

See text, §§ 62, 63.

In Illinois the second sentence is as follows: "An antecedent or pre-existing claim, whether for money or not, constitutes value where an instrument is taken either in satisfaction therefor or as security therefor, and is deemed such whether the instrument is payable on demand or at a future time."

The Wisconsin act (§§ 1675-51) inserts after "debt," "discharged, extinguished or extended," and adds at the end of the section: "But the indorsement or delivery of negotiable paper as collateral security for a pre-existing debt, without other consideration, and not in pursuance of an agreement at the time of delivery, by the maker, does not constitute value."

The purpose of this section, that is, section 25, was to settle the conflict of decisions in regard to the value essential to constitute a transferee a purchaser for value or holder in due course.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

The burden of showing insolvency of the husband's estate held to be on the maker, the wife. *Vaughan v. Bass*, 10 Ala. App. 388, 64 So. 543.

This part of the section applies also to collateral security. *Vogler v. Manson* (Ala.), 76 So. 117.

As to promise to deposit additional security if collateral should cease to be satisfactory. *Zadek v. Forchheimer* (Ala. App.), 77 So. 941.

Pre-existing debt as valuable consideration. *Davies v. Simpson*, — Ala. —, 79 So. 48.

Marital rights in lands held in trust is sufficient consideration. *Domax v. Colorado Nat. Bank*, 46 Colo. 229, 104 Pac. 85.

Collateral security for antecedent or pre-existing debt is value. *Crystal River Lumber Co. v. Consol. Naval Stores Co.*, 63 Fla. 119, 58 So. 129.

Giving of a renewal note waives right of defense as to consideration when maker has full knowledge. *Roess Lumber Co. v. State Exch. Bank*, 68 Fla. 324, 67 So. 188, Ann. Cas. 1916B, 327.

Credit and withdrawal on the books of a bank as consideration. *Bland v. Fidelity Trust Co. (Fla.)*, 71 So. 630, L. R. A. 1916F, 209.

Cancellation of old note makes a good consideration. *Fidelity State Bank v. Miller*, 29 Idaho 777, 162 Pac. 244.

Collateral security for antecedent or pre-existing debt is value. *Many Blanc & Co. v. Krueger*, 153 Ill. App. 327.

Note taken as collateral security is for consideration. *Elgin Nat. Bank v. Goecke*, — Ill. —, 129 N. E. 149.

Credit of certificate of deposit as a consideration. *Commercial Nat. Bank v. Citizens' State Bank*, 132 Iowa 706, 109 N. W. 198.

Substitution and exchange of collaterals held to be for value. *Voss v. Chamberlain*, 139 Iowa 569, 117 N. W. 269.

Collateral security for antecedent or pre-existing debt is value. *Iowa Nat. Bank v. Carter*, 144 Iowa 715, 123 N. W. 237.

Collateral security for antecedent or pre-existing debt is value. *State Bank v. Bilsted*, 162 Iowa 433, 136 N. W. 204.

Renewal note working an extension of time for payment of an antecedent debt is for sufficient consideration. *Mohn v. Mohn (Iowa)*, 164 N. W. 341.

Note given in payment of the debt of a third party has good consideration. *Bridges v. Vann*, 88 Kan. 98, 127 Pac. 604.

Money can not be recovered from a transferer which was received in payment of a pre-existing debt although originally obtained by fraud. *Benjamin v. Welda State Bank*, 98 Kan. 361, 158 Pac. 65, L. R. A. 1917A, 704.

Holder in due course may waive irregularities and recover on original terms of note. *Redfield State Bank of Redfield, Kans., v. Myrick*, — Kan. —, 194 P. 648.

Collateral security for antecedent or pre-existing debt is value. *Wilkins v. Usher*, 123 Ky. 696, 97 S. W. 37.

Payee gave value for a note who had on receiving said note paid a debt of the maker due to a third person. *Hermann's Exr. v. Gregory*, 131 Ky. 819, 115 S. W. 809.

Payment or part payment of a pre-existing debt is value. *Lovelace v. Lovelace*, 136 Ky. 452, 124 S. W. 400.

Bank taking note as collateral security. *Campbell v. Fourth Nat. Bank*, 137 Ky. 555, 126 S. W. 114.

Notes given by lawyer for mistake of opinion supported by consideration. *Hyman v. Succession of Parkerson*, 140 La. 249, 72 So. 953, L. R. A. 1917B, 694.

Exchange of notes is supported by a good consideration. *Mehlinger v. Harriman*, 185 Mass. 245.

Wife's note given as security to a third person in payment of her husband's debt is supported by a sufficient consideration. *Widger v. Baxter*, 190 Mass. 130, 76 N. E. 509, 3 L. R. A. (N. S.) 436.

Accommodation note is for value under the second part of this section. *Jennings v. Law*, 199 Mass. 124, 85 N. E. 157.

Taking a demand note as collateral for the pre-existing debt of a husband to a bank made the bank a holder for value of the note as against the wife, who was an accommodation maker. *Lowell v. Bickford*, 201 Mass. 543, 88 N. E. 1.

Accommodation check given to make good the overdraft of another is supported by sufficient consideration. *Neal v. Wilson*, 213 Mass. 336, 100 N. E. 544.



Order as to stopping payment and certain entries on bank book as a consideration. *Usher v. A. S. Tucker Co.*, 217 Mass. 441, 105 N. E. 360, L. R. A. 1916F, 826.

Note given for the note of a third person when supported by sufficient consideration. *Seager v. Drayton*, 217 Mass. 571, 105 N. E. 461.

Payment of pre-existing debt is value. *Smith v. Johnson*, 224 Mass. 50, 112 N. E. 644.

Collateral security for antecedent or pre-existing debt is value. *Graham v. Smith*, 155 Mich. 65, 118 N. W. 726.

Collateral security for antecedent or pre-existing debt is value. *Bank of Montreal v. Beecher*, 133 Minn. 81, 157 N. W. 1070.

Collateral security for antecedent or pre-existing debt is value. *Snelling State Bank v. Clasen*, 132 Minn. 404, 157 N. W. 643.

A check for a debt outlawed by a statute is supported by a consideration. *Baxter v. Brandenburg* (Minn.), 163 N. W. 516.

Transfer of a collateral note a good consideration. *First Nat. Bank v. John McGrath & Sons*, 111 Miss. 872, 72 So. 701.

Collateral security for antecedent or pre-existing debt is value. *Nat. Bank of Commerce v. Morris*, 156 Mo. App. 43, 135 S. W. 1008.

Collateral security for antecedent or pre-existing debt is value. *State Bank v. Cape Girardeau Co.*, 172 Mo. App. 662, 155 S. W. 1111.

Extension of time for the payment of a debt of a third person is good consideration. *Citizens Bank v. Oaks*, 184 Mo. App. 598, 170 S. W. 679.

Collateral security for antecedent or pre-existing debt is value. *Central Bank v. Lyda* (Mo. App.), 191 S. W. 245.

Note transferred in payment of pre-existing debt. *Swift & Co. v. McFarland*, — Mo. App. —, 231 S. W. 65.

The execution of a renewal note for a pre-existing debt is supported by a sufficient consideration although containing some new and different stipulations. *Parchen v. Chessman*, 49 Mont. 326, 142 Pac. 631, Ann. Cas. 1916A, 681.

Good consideration given by cancellation of old note. *Travis v. Unkart*, 89 N. J. L. 571, 99 Atl. 320, Ann. Cas. 1917C, 1031.

Accommodation note is for value under the second part of this section. *Citizens Nat. Bank v. Lilienthal*, 40 App. Div. 609, 57 N. Y. Supp. 567.

Collateral security for antecedent or pre-existing debt is value. *Brewster v. Shrader*, 26 Misc. Rep. 480, 57 N. Y. Supp. 606.

Surrender of non-negotiable note makes a good consideration. *Petrie v. Miller*, 57 App. Div. 17, 67 N. Y. Supp. 1042, affirmed, 173 N. Y. 596.

An indorsement by a third person before a note is delivered supported by the consideration of a sale of goods to the maker. *Mohlman v. McKane*, 60 App. Div. 546, 69 N. Y. Supp. 1046.

Promise not to sue is good consideration. *Milius v. Kauffmann*, 104 App. Div. 442, 93 N. Y. Supp. 669.

Payment of pre-existing debt is value. *Bigelow Co. v. Automatic Gas Co.*, 56 Misc. Rep. 389, 107 N. Y. Supp. 894.

Payment of pre-existing debt is value. *Wallabout Bank v. Peyton*, 123 App. Div. 727, 108 N. Y. Supp. 42.

Plaintiff gave no value where defendant, by mistake, gave a check to the payee, who indorsed it to the plaintiff as a loan. *Rosenthal v. Parsont*, 110 N. Y. Supp. 223.

Payment of pre-existing debt is value. *Mindlin v. Appelbaum*, 62 Misc. Rep. 300, 114 N. Y. Supp. 908.

Payment of pre-existing debt is value. *Albert v. Hoffman*, 64 Misc. Rep. 87, 117 N. Y. Supp. 1043.

Accommodation note for antecedent or pre-existing note is a transfer for value. *Maurice v. Fowler*, 78 Misc. Rep. 357, 138 N. Y. Supp. 425.

Accommodation note for antecedent or pre-existing debt is a transfer for value. *Martin L. Hall Co. v. Todd*, 139 N. Y. Supp. 111.

Payment of pre-existing debt is value. *Broderick, etc., Co. v. McGrath*, 81 Misc. Rep. 222, 142 N. Y. Supp. 49.

Notes given by the directors of a bank in order to maintain the value of their stock is supported by sufficient consideration. *Union Bank v. Sullivan*, 214 N. Y. 332, 108 N. E. 558.

Collateral security for antecedent or pre-existing debt is value. *Smathers v. Toxoway Hotel Co.*, 162 N. C. 346.

Collateral security for antecedent or pre-existing debt is value. *Brooks v. Sullivan*, 129 N. C. 190, 39 S. E. 822.

Exchange of notes supported by a good consideration. *Franklin Nat. Bank v. Roberts Bros.*, 168 N. C. 473, 84 S. E. 706.

As to extension of time by deposit of collateral. *American Nat. Bank v. Dew* (N. C.), 94 S. E. 708.

Transfer of a collateral note for another note is a good consideration. *Second Nat. Bank v. Warner*, 19 N. D. 485, 126 N. W. 100.

Execution of note to a bank under threat of prosecution. *State v. Hills*, 94 Ohio St. 171, 113 N. E. 1045, L. R. A. 1917B, 684.

Payment of pre-existing debt is value. *Ogle v. Armstrong* (Okla.), 153 Pac. 1139.

Promissory note taken as collateral security is for consideration. *Southwest Nat. Bank of Commerce of Kansas City v. Todd*, — Okl. —, 192 P. 1096.

When checks are exchanged each check is a consideration for the other; cash is an independent obligation and not conditional on the payment of the other. *Matlock v. Scheuerman*, 51 Ore. 49, 93 Pac. 823, 17 L. R. A. (N. S.) 747.

Holds *contra* to the general rule that a transfer as security for an antecedent or pre-existing debt is not a transfer for value. *Raken v. Henry*, 16 Pa. Dist. Reports 207.

Accommodate note is for value under this part of this section. *Stein v. Jacobs*, 20 Pa. Dist. Ct. 48.

Payee of a note given in payment of a bill has given value. *Wilbor v. Hawkins*, 38 R. I. 119, 94 Atl. 856.

Rule held not to apply where debt was worthless and the obligation of a third party. *Citizens Trust Co. v. McDougald*, 132 Tenn. 323, 178 S. W. 432, L. R. A. 1917C, 840.

Collateral security for antecedent or pre-existing debt is value. *Figuers v. Fly*, 137 Tenn. 358, 193 S. W. 117.

Note taken as security for pre-existing debt is for consideration. *Crane & Co. v. Hall*, — Tenn. —, 213 S. W. 414.

Note given to prevent run on a bank supported by good consideration. *Utah Nat. Bank v. Nelson*, 38 Utah 169, 111 Pac. 907.

Collateral security for antecedent or pre-existing debt is value. *Felt v. Bush*, 41 Utah 462, 126 Pac. 688.

Note signed to enable cashier of bank to borrow money to apply on shortage is supported by sufficient consideration. *Helper State Bank v. Jackson* (Utah), 160 Pac. 287.

Collateral security for antecedent or pre-existing debt is value. *Payne v. Zell*, 98 Va. 294, 36 S. E. 379.

Collateral security for antecedent or pre-existing debt is value. *Trustees of American Bank v. McComb*, 105 Va. 473, 54 S. E. 14.

Collateral security for antecedent or pre-existing debt is value. *German-American Bank v. Wright*, 85 Wash. 460, 148 Pac. 769.

Taking of note on debt is for value. *Guaranty Security Co. v. Coad*, — Wash. —, 195 Pac. 22.

Bank has given value although failed to deduct amount of note from defendant's balance on deposit. *Northfield Nat. Bank v. Arndt*, 132 Wis. 383, 112 N. W. 451.

Promise to pay money is a valuable consideration although money was never advanced. *Marling v. FitzGerald*, 138 Wis. 93, 120 N. W. 388.

Collateral security for antecedent or pre-existing debt is value. *Samson v. Ward*, 147 Wis. 48, 132 N. W. 629.

Wisconsin cases. See the following two decisions in Wisconsin under the form of the statute as adopted in Wisconsin. *Badger Machinery Co. v. Columbia Co. Electric Light & Power Co. (Wis.)*, 163 N. W. 188.

*Holmes v. Wisconsin Grain, etc., Co. (Wis.)*, 164 N. W. 1007.

Transfer for value must be shown. *Jones v. Brandt*, — Wis. —, 181 N. W. 813.

Accommodation note transferred as collateral security for an antecedent debt is for value. *In re Hopper-Morgan Co.*, 154 Fed. Rep. 249.

Collateral security for antecedent or pre-existing debt is value. *Scherer v. Everest*, 168 Fed. 822, 94 C. C. A. 346.

Accommodation note is for value under this part of this section. *Trust Co. v. Markee*, 179 Fed. Rep. 764.

Collateral security for antecedent or pre-existing debt is value. *Melton v. Pensacola Co.*, 190 Fed. 126, 111 C. C. A. 166.

*Nicholas v. Waukesha Canning Co.*, 195 Fed. Rep. 807.

Deposits of checks and drafts upon other banks by one in his bank as consideration. *Security Nat. Bank v. Old Nat. Bank*, 241 Fed. Rep. 1.

England. Deposit of check and drawn upon. *National Bank v. Silke (1891)*, 1 Q. B. 435, 439.

England. Deposit of check. *Royal Bank v. Tottenham (1894)*, 2 Q. B. 715.

England. Deposit of check and overdrawn. *Gaden v. Newfoundland Sav. Bank (1899)*, A. C. 281.

England. Deposit of check. *Capital & Counties Bank v. Gordon (1903)*, A. C. 240.

England. Renewal note. *Edwards v. Chancellor*, 52 J. P. 454.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Vaughan v. Bass*, 10 Ala. App. 388, 64 So. 543; *Boatwright v. Scheuer, Wise & Co. (1914)*, 66 So. 819; *Anders v. Sandlin (1915)*, 67 So. 684; *Orr v. Stewart (1915)*, 69 So. 649; *Sherril v. Merchants, etc., Bank (Ala.)*, 70 So. 723; *Citizens' Nat. Bank v. Bucheit (Ala.)*, 71 So. 87; *Dilworth v. Holmes Furniture & Vehicle Co. (1916)*, 73 So. 288; *Peoples' Bank & Trust Co. v. Floyd (1917)*, 75 So. 940; *Zadek v. Forchheimer (Ala. App.)*, 77 So. 941; *Vogler v. Manson (Ala.)*, 76 So. 117; *Davies v. Simpson*, — Ala. —, 790 So. 48.

*Arkansas*.—*Hood v. Robson (1916)*, 187 S. W. 1059; *Arnwell v. Arnold & Co. (1917)*, 193 S. W. 506; *Johnson v. Ankrum (1917)*, 199 S. W. 897.

*California*.—*Shoenhair v. Jones (1917)*, 165 Pac. 971; *Ballou v. Avery (1917)*, 166 Pac. 1003; *Wetzel v. Cole (1917)*, 165 Pac. 692; *Perzoni v.*

Greenwell (1918), 174 Pac. 60; Mahana v. VanAlstyne (1919), 178 Pac. 853.

*Colorado.*—Domax v. Colorado Nat. Bank (1909), 46 Colo. 229, 104 Pac. 85; Western Investment & Land Co. v. First Nat. Bank (1918), 172 Pac. 6; Western Slope Fruit Growers' Assn. v. Divine (1918), 173 Pac. 426.

*Connecticut.*—New Haven Mfg. Co. v. New Haven Pulp Co. (1903), 76 Conn. 126, 55 Atl. 604; Russell El. Co. v. Bassett (1907), 79 Conn. 709, 66 Atl. 531; Chittenden v. Carter (1909), 82 Conn. 585; Fairfield Co. Nat. Bank v. Hammer (1915), 95 Atl. 31; Continental Credit Co. v. Ely (1917), 100 Atl. 435.

*Florida.*—Crystal River Lumber Co. v. Consolidated Naval Stores Co. (1912), 63 Fla. 119, 58 So. 129; Bland v. Fidelity Tr. Co. (Fla.), 71 So. 630, L. R. A. 1916F, 209; Roess Lumber Co. v. State Exch. Bank, 68 Fla. 324, 67 So. 188, Ann. Cas. 1916B, 327.

*Idaho.*—Fidelity State Bank v. Miller (1917), 29 Idaho 777, 162 Pac. 244.

*Illinois.*—Many, Blanc & Co. v. Krueger (1910), 153 Ill. App. 327; McHenry v. Croft (1911), 163 Ill. App. 426; Elgin National Bank v. Goecke, 129 N. E. 149.

*Indiana.*—Merch. Nat. Bank v. Nees (1916), 112 N. E. 904.

*Iowa.*—Gooch v. Gooch (1916), 160 N. W. 333; Commercial Nat. Bank v. Citizens State Bank (1906), 132 Iowa 706, 109 N. W. 198; Crawford Co. State Bank v. Stegman (1908), 137 Iowa 13, 114 N. W. 549; Voss v. Chamberlain (1908), 139 Iowa 569, 117 N. W. 269; Iowa Nat. Bank v. Carter, 144 Iowa 715, 123 N. W. 237; Zimbelman v. Finnegan (1909), 141 Iowa 358; Robinson v. Robinson (1910), 147 Iowa 615; Robertson v. United States Live Stock Co. (1914), 145 N. W. 535; Meginnnes v. McChesney (1916), 160 N. W. 50; State Bank of Halstad v. Bilstad (1912), 136 N. W. 204; Mohn v. Mohn (1917), 164 N. W. 341.

*Kansas.*—Birket v. Ellward (1904), 68 Kans. 295, 74 Pac. 1100; Bridges v. Vann (1912), 88 Kans. 98, 127 Pac. 604; Benjamin v. Welda State Bank, 98 Kan. 361, 158 Pac. 65, L. R. A. 1917A, 704; Redfield State Bank v. Myrick, 194 Pac. 648.

*Kentucky.*—Wilkins v. Usher (1906), 123 Ky. 696, 97 S. W. 37; Citizens Bank v. Bank of Waddy (1907), 126 Ky. 169, 103 S. W. 249; Herman's Excr. v. Gregory (1909), 131 Ky. 819, 115 S. W. 809; Lovelace v. Lovelace (1910), 136 Ky. 452, 124 S. W. 400; Campbell v. Fourth Nat. Bank of Cincinnati (1910), 137 Ky. 555, 126 S. W. 114; Am. Nat. Bank v. Minor & Son (1911), 135 S. W. 278; Jett v. Standafer (1911), 143 Ky. 787, 137 S. W. 513; Pratt v. Rounds (1914), 169 S. W. 848; Overby v. Williams (1916), 185 S. W. 822; Receiver First Nat. Bank of Loudon v. Boreling (1916), 190 S. W. 1106; Ballard v. Ballard (1917), 197 S. W. 661.

*Louisiana.*—Scheuerman v. Monarch Fruit Co. (1909), 123 La. 59, 48 So. 647; Interstate Trust & Banking Co. v. Irwin (1915), 70 So. 313; Hyman v. Parkerson (1916), 140 La. 249, 72 So. 953, L. R. A. 1917B, 694.

*Maryland.*—Black v. Bank of Westminster, 96 Md. 399, 54 Atl. 88.

*Massachusetts.*—*Boston Steel & Iron Co. v. Steuer* (1903), 183 Mass. 140, 66 N. E. 646; *Mehlinger v. Harriman*, 185 Mass. 245; *Widger v. Baxter* (1906), 190 Mass. 130, 76 N. E. 509, 3 L. R. A. (N. S.) 436; *Jennings v. Law* (1908), 199 Mass. 124, 85 N. E. 157; *Lowell v. Bickford* (1909), 201 Mass. 543, 88 N. E. 1; *Shawmut Commercial Paper Co. v. Brigham* (1912), 211 Mass. 72; *Crosier v. Crosier* (1913), 215 Mass. 535; *Neal v. Wilson*, 213 Mass. 336, 100 N. E. 544; *Usher v. A. S. Tucker Co.* (1914), 271 Mass. 441, 105 N. E. 360; *Smith v. Johnson* (1916), 224 Mass. 50, 112 N. E. 644; *Ajemain v. Robinson* (1917), 115 N. E. 749; *Seager v. Drayton*, 217 Mass. 571, 105 N. E. 461.

*Michigan.*—*Graham v. Smith* (1908), 155 Mich. 65, 118 N. W. 726; *J. D. Gruber Co. v. Smith* (1917), 162 N. W. 124.

*Minnesota.*—*German-Am. Bank of Ritzville v. Lyons* (1914), 149 N. W. 658; *Security Nat. Bank v. Pulver* (1915), 155 N. W. 641; *Snelling State Bank v. Clasen*, 132 Minn. 404, 157 N. W. 643; *Am. Multigraph Sales Co. v. Grant* (1916), 160 N. W. 676; *Bank of Montreal v. Beecher* (1916), 157 N. W. 1070; *Baxter v. Brandenburg* (1917), 163 N. W. 516.

*Mississippi.*—*First Nat. Bank v. John McGrath & Sons*, 111 Miss. 872, 72 So. 701; *Sykes v. Moore* (1917), 76 So. 538.

*Missouri.*—*Wright v. Miss. Valley Tr. Co.* (1910), 129 S. W. 407; *Reeves v. Litts* (1910), 143 Mo. App. 196, 128 S. W. 246; *Dorris v. Cronan* (1910), 129 S. W. 1014; *Nat. Bank of Commerce in St. Louis v. Morris* (1911), 156 Mo. App. 43, 135 S. W. 1008; *Golden City Banking Co. v. Greisel* (1912), 161 Mo. App. 477; *State Bank of Freeport v. Cape Girardeau & C. R. Co.* (1913), 172 Mo. App. 662, 155 S. W. 1111; *Greer v. Orchard* (1913), 161 S. W. 875; *Citizens Bank of Pomono v. Oaks* (1914), 184 Mo. App. 598, 179 S. W. 679; *Citizens Nat. Bank v. Bombauer* (1916), 189 S. W. 651; *Central Bank of Columbia v. Lydia* (1917), 191 S. W. 245; *Shawhan v. Distillery Co.* (1917), 197 S. W. 369; *Bank of Greentop v. Sloop* (1918), 200 S. W. 304; *Boatmen's Bank v. St. Louis Union Trust Co.* (1918), 205 S. W. 629; *First Nat. Bank v. Henry* (1918), 202 S. W. 281; *Swift & Co. v. McFarland*, 231 S. W. 65.

*Montana.*—*Parchen v. Chessman* (1914), 49 Mont. 326, 142 Pac. 631, Ann. Cas. 1916A, 681.

*Nebraska.*—*Benton v. Sikyta* (1909), 84 Neb. 808, 122 S. W. 60; *Farmers Nat. Bank of Lyons v. Dixon* (1912), 91 Neb. 652, 136 N. W. 845; *Livestock Nat. Bank v. Bragonier* (1915), 153 N. W. 504; *Macke v. Jungels* (1918), 166 N. W. 191.

*New Jersey.*—*Travis v. Unkart* (1916), 89 N. J. L. 571, 99 Atl. 320.

*New York.*—*Riverside Bank v. Woodhaven Junction Land Co.* (1898), 34 A. D. 359; *Citizens Nat. Bank v. Lilienthal* (1899), 57 N. Y. Supp. 567, 40 A. D. 609; *Brewster v. Schrader* (1899), 26 Misc. 480; *Rosenwald v. Goldstein* (1899), 27 Misc. 827; *Petrie v. Miller* (1901), 57 A. D. 17, 67 N. Y. Supp. 1042, 173 N. Y. 596 (1903) (affirmed without an opinion); *Sutherland v. Mead* (1903), 80 A. D. 103, 80 N. Y. Supp. 504; *Levy v. Huwer* (1903), 80 A. D. 499; *Roseman v. Mahoney* (1903), 86 A. D. 377, 83 N. Y. Supp. 749; *Bank of Am. v. Waydell* (1905), 103 A. D. 25, 92 N. Y. Supp. 666; *Sutherland v. Mead*, 80 A. D. 103; *Milius v. Kauffman* (1905), 104 A. D. 442, 93 N. Y. Supp. 669; *Hover v. Magley* (1905), 48 Misc. 430, 96 N. Y. Supp. 925; *Nat. Bank of Barre v. Foley* (1907), 54 Misc. 126, 103 N. Y. Supp. 553; *Ward v. City Trust*

Co., 102 N. Y. Supp. 50, 117 A. D. 130; *English v. Schlesinger* (1907), 55 Misc. 584, 105 N. Y. Supp. 989; *Mohlman Co. v. McKane* (1901), 69 N. Y. Supp. 1046, 60 A. D. 546; *The Gansevoort Bank of N. Y. v. Gilday* (1907), 110 N. Y. Supp. 271, 53 Misc. 107; *Bigelow v. Automatic Gas Producer Co.* (1907), 107 N. Y. Supp. 894; *The Wall-about Bank v. Peyton* (1908), 123 A. D. 727, 108 N. Y. Supp. 42; *Joves-hoff v. Rockney* (1908), 109 N. Y. Supp. 818, 58 Misc. 559; *Rosenthal v. Parsont* (1908), 110 N. Y. Supp. 223; *Valley Dew Distilling Co. v. Ritzmann* (1908), 110 N. Y. Supp. 917; *Harris v. Fowler* (1908), 110 N. Y. Supp. 987, 59 Misc. 523; *Macauley v. Holsten* (1909), 114 N. Y. Supp. 611; *Mindlin v. Appelbaum* (1909), 62 Misc. 300, 114 N. Y. Supp. 908; *The Van Orden Tr. Co. v. L. Rosenberg, Inc.* (1909), 62 Misc. 285, 114 N. Y. Supp. 1025; *Albert v. Hoffman*, 117 N. Y. Supp. 1043, 64 Misc. Rep. 87; *Uvalde Asphalt Paving Co. v. Nat. Trading Co.* (1909), 135 A. D. 391, 120 N. Y. Supp. 11; *King v. Bowling Green Trust*, 129 N. Y. Supp. 977, 145 A. D. 398; *Lehrenkrauss v. Bonnell* (1910), 199 N. Y. 240, 92 N. E. 637; *Rogonski v. Brill* (1911), 131 N. Y. Supp. 589; *King* 240, 92 N. E. 637; *Rogonski v. Brill* (1911), 131 N. Y. Supp. 589; *Maurice v. Fowler* (1912), 138 N. Y. Supp. 424; *Broderick & Bascom Rope Co. v. McGrath* (1913), 142 N. Y. Supp. 491, 81 Misc. 222; *Martin L. Hall v. Todd* (1912), 139 N. Y. Supp. 111; *Shape v. Shape* (1914), 150 N. Y. Supp. 367; *Union Bank of Brooklyn v. Sullivan* (1915), 108 N. E. 558, 214 N. Y. 332; *Brown v. Rowan* (1915), 154 N. Y. Supp. 1098; *McBee Co. v. Shoemaker* (1916), 174 A. D. 291, 160 N. Y. Supp. 251; *Miller v. Campbell* (1916), 160 N. Y. Supp. 834; *Stokes v. Sanders* (1918), 168 N. Y. Supp. 409; *Lajani v. Abraham Schdala & Sons Corporation* (1918), 171 N. Y. Supp. 611; *American Brass & Copper Co. v. Pine* (1919), 173 N. Y. Supp. 147.

*North Carolina*.—*Brooks v. Sullivan* (1901), 129 N. Car. 190, 39 S. E. 822; *Singer Mfg. Co. v. Summers* (1906), 143 N. C. 102, 55 S. E. 522; *Murchison Nat. Bank v. Dunn Oil Mills Co.* (1909), 150 N. Car. 718, 64 S. E. 885; *J. L. Smathers & Co. v. Toxaway Hotel Co.* (1913), 78 S. E. 224; *Am. Ex. Nat. Bank v. Segroves* (1914), 166 N. C. 608, 82 S. E. 947; *Franklin Nat. Bank v. Roberts Bros.* (1915), 168 N. C. 473, 84 S. E. 706; *Am. Nat. Bank of Richmond v. Hill* (1915), 85 S. E. 209; *Cherokee County v. Meroney* (1917), 92 S. E. 616; *Acme Mfg. Co. v. McCormick* (1918), 95 S. E. 555; *A. B. Hunter & Co. v. Sherron* (1918), 97 S. E. 5.

*North Dakota*.—*Second Nat. Bank v. Werner* (1910), 19 N. D. 485, 126 N. W. 100; *Farmers' Bank of Mercer Co. v. Riedlinger* (1914), 146 N. W. 556; *Sawyer State Bank v. Sutherland* (1917), 162 N. W. 696.

*Ohio*.—*State v. Hills* (1916), 94 Ohio St. 171, 113 N. E. 1045, L. R. A. 1917B, 684; *Hamilton Mach. Tool Co. v. Memphis Nat. Bank*, 84 Ohio St. 184, 95 N. E. 777.

*Oklahoma*.—*Cain v. Munger* (1915), 149 Pac. 1086; *Ogle v. Armstrong* (1915), 153 Pac. 1139; *State v. Soliss* (1915), 152 Pac. 1114; *Purcell Mill & Elevator Co. v. Canadian Val. Const. Co.* (1916), 160 Pac. 485; *First Nat. Bank v. Harkey* (1917), 163 Pac. 273; *Starr v. Lonewolf* (1917), 163 Pac. 532; *Chandler v. Lach* (1918), 170 Pac. 516; *Levy v. Reed* (1918), 170 Pac. 497; *Ogle v. Armstrong* (Okla.), 153 Pac. 1139; *Southwest National Bank of Commerce v. Todd*, 192 Pac. 1096.

*Oregon*.—*Matlock v. Scheuerman* (1908), 51 Oreg. 49, 93 Pac. 823, 17 L. R. A. (N. S.) 947; *Anderson v. Stayton State Bank* (1916), 159 Pac. 1033; *Wicks v. Metcalf* (1917), 163 Pac. 988.

*Pennsylvania*.—Stein v. Jacobs, 20 Pa. Dist. Ct. 48; Rathfon v. Locher (1906), 215 Pac. 571; Allentown Nat. Bank v. Clay Product Supply Co. (1907), 217 Pa. St. 128, 66 Atl. 252; Morrison v. Whitefield (1912), 46 Pa. Super. 103; Levy v. Gilligan (1914), 90 Atl. 647.

*Rhode Island*.—Wilbour v. Hawkins (1915), 38 R. I. 119, 94 Atl. 856.

*Tennessee*.—Elgin City Bldg. Co. v. Hall (1907), 119 Tenn. 548, 108 S. W. 1068; Citizens Tr. Co. v. McDougald (1915), 132 Tenn. 323, 178 S. W. 432; Crane & Co. v. Hall, 213 S. W. 414.

*Texas*.—Magill v. McCamley (1916), 182 S. W. 22; Yantis v. Jones (1916), 184 S. W. 572.

*Utah*.—Utah Nat. Bank of Salt Lake City v. Nelson (1910), 38 Utah 169, 111 Pac. 907; Felt v. Bush (1912), 126 Pac. 688; Miller v. Marks (1915), 148 Pac. 412; Helper State Bank v. Jackson (Utah), 160 Pac. 287; Smith v. Brown (1917), 165 Pac. 468; Manson v. Harris (1918), 170 Pac. 970.

*Virginia*.—Payne v. Zell (1900), 98 Va. 294, 36 S. E. 379; Am. Bank of Orange v. McComb (1906), 105 Va. 473, 54 S. E. 14; Saunders v. Bank of Mecklenburg (1911), 71 S. E. 714; Ford v. Engelman (1915), 118 Va. 89, 86 S. E. 852; Colley v. Summers Parrott Hardware Co. (1916), 119 Va. 439, 89 S. E. 906; Brenard Mfg. Co. v. Brown (1917), 92 S. E. 850.

*Vermont*.—Bean v. Parker (1916), 96 Atl. 17.

*Washington*.—Pitt v. Little (1910), 58 Wash. 355, 108 Pac. 941; German-Am. Bank of Seattle v. Wright (1915), 148 Pac. 769; Guaranty Security Co. v. Coad, 195 Pac. 22.

*West Virginia*.—Burner v. Nutter (1915), 87 S. E. 359.

*Wisconsin*.—Hodge v. Wallace (1906), 129 Wis. 84, 108 N. W. 212, 116 Am. St. R. 938; Pelton v. Spider Lake S. & L. Co. (1907), 132 Wis. 219, 112 N. W. 29, 122 Am. St. 963; Northfield Nat. Bank v. Arndt, 132 Wis. 383, 112 N. W. 451; Marling v. Fitzgerald (1909), 138 Wis. 93, 120 N. W. 388; Samson v. Ward (1911), 147 Wis. 48, 132 N. W. 629; Holmes v. Wisconsin Grain, etc., Co. (Wis.), 164 N. W. 1007; Becker v. Noegel (1917), 160 N. W. 1055, 165 Wis. 73; Badger Co. v. Columbia Co. (1917), 163 N. W. 188; Jones v. Brandt, 181 N. W. 813.

*United States*.—Barnsdall v. Waltemeyer (1905), 142 Fed. 415, 73 C. A. 515 (Colo.); Scherer & Co. v. Everest (1909), 168 Fed. 822, 94 C. A. 346; In re Hopper-Morgan Co. (1907), 154 Fed. 249 (N. Y.); Trust Co. of St. Louis Co. v. Markee (1910), 179 Fed. 764; Milton v. Pensacola Bank & Tr. Co. (1911), 190 Fed. 126, 111 C. C. A. 166; Nichols v. Waukesha Canning Co., 195 Fed. Rep. 807; Smith v. Nelson Land & Cattle Co., 212 Fed. Rep. 56, 122 C. C. A. 512; Security Nat. Bank v. Old Nat. Bank, 241 Fed. Rep. 1; U. S. Fidelity & Guaranty Co. v. Walker (1918), 248 Fed. 42.

§ 26. What constitutes holder for value. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.<sup>1, 1a</sup>

See text, § 128.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Allegation as to credit on books of a bank and money remaining in bank. *Richards v. Street*, 31 App. Cas. D. C. 427.

Pledgee as holder for value. *Harris v. Nicholson-Foley Co.*, 179 Ky. 513, 200 S. W. 929.

An allegation in an answer that an indorsement was without consideration is insufficient as against a complaint alleging consideration. *Rogers v. Morton*, 46 Misc. Rep. 494, 95 N. Y. Supp. 49.

The surrender of an old note and the making of a new one makes the holder a holder for value. *Van Norden Trust Co. v. L. Rosenberg*, 62 Misc. Rep. 285, 114 N. Y. Supp. 1025.

The crediting with amounts in accounts constitutes one a holder for value. *Metzger v. Sygall*, 83 Wash. 80, 145 Pac. 72.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Bledsoe v. City Nat. Bank of Selma* (1912), 7 Ala. App. 195, 60 So. 942; *Miller v. Johnson* (1914), 66 So. 486; *Armstrong v. Walker* (1917), 76 So. 280; *Hudson v. Repton State Bank* (1917), 75 So. 695; *Wilson v. Weaver* (1917), 77 So. 238.

*District of Columbia*.—*Richards v. Street*, 31 App. Cas. D. C. 427.

*Idaho*.—*Kimpton v. Studebaker Bros. Co.* (1908), 14 Ida. 552, 94 Pac. 1039.

*Iowa*.—*Higby v. Bahrenfuss* (1917), 163 N. W. 247.

*Kentucky*.—*Herman's Excr. v. Gregory* (1909), 131 Ky. 819, 115 S. W. 809; *Harrison v. Nicholson-Foley Co.*, 179 Ky. 513, 200 S. W. 929.

*Maryland*.—*Black v. First Nat. Bank* (1903), 96 Md. 399, 54 Atl. 88.

*Massachusetts*.—*Jennings v. Law* (1908), 199 Mass. 124, 85 N. E. 157; *Nat. Investment & Security Co. v. Carey* (1916), 111 N. E. 357.

*Michigan*.—*First Nat. Bank v. Grand Rapids & I. Ry. Co.* (1917), 161 N. W. 859; *National Bank of Montreal v. Bucher* (1916), 157 N. W. 1070.

*Missouri*.—*Coleman v. Stocks* (1911), 159 Mo. App. 43, 139 S. W. 216; *Wright v. Wayland* (1916), 188 S. W. 928; *Wurlitzer Co. v. Rossman* (1916), 190 S. W. 636; *Howard v. Int. Bank* (1918), 200 S. W. 91.

*Montana*.—*State Bank of Moore v. Fursythe* (1910), 41 Mont. 249.

*Nebraska*.—*Nat. Bank of Commerce v. Bossemeyer* (1917), 162 N. W. 503.

*New York*.—*Riverside Bank v. Woodhaven Junction Land Co.* (1898), 34 A. D. 350; *Petrie v. Miller* (1901), 57 A. D. 17, 67 N. Y. Supp. 1042, affirmed without an opinion, 173 N. Y. 596; *Fleitman v. Ashley* (1901), 60 A. D. 201; *Sutherland v. Mead* (1903), 80 A. D. 103, 80 N. Y. Supp. 504; *Rogers v. Morton* (1905), 46 Misc. 494, 95 N. Y. Supp. 49; *Hover v. Magley* (1905), 48 Misc. 430, 96 N. Y. Supp.



925; *Rosenthal v. Freedman* (1907), 53 Misc. 595, 103 N. Y. Supp. 714; *Cleary v. DeBeck Plate Glass Co.* (1907), 54 Misc. 537, 104 N. Y. Supp. 831; *Van Nordin Tr. Co. v. L. Rosenberg, Inc.* (1909), 62 Misc. 285, 114 N. Y. Supp. 1025; *Heimbach v. Doubleday, Page Co.* (1909), 130 A. D. 34; *King v. Bowling Green Tr. Co.* (1911), 145 A. D. 398; *Broderick & Bascom Rope Co. v. McGrath* (1913), 143 N. Y. Supp. 496, 81 Misc. 222; *Lich-und-Spakassa Audorf v. Pfizer* (1913), 158 A. D. 505, 143 N. Y. Supp. 744; *Munnich v. Joffe* (1914), 149 N. Y. Supp. 338, 164 A. D. 30; *Sabine v. Paine* (1915), 151 N. Y. Supp. 735; *Poshkoff v. Bernstein* (1916), 159 N. Y. Supp. 206; *Republican Art Printer v. David* (1916), 159 N. Y. Supp. 1010.

*North Carolina.*—*Toms v. Jones* (1900), 127 N. Car. 464; *Citizens & Marine Bank of Newport News v. Southern R. W.* (1910), 153 N. Car. 346.

*Pennsylvania.*—*State Bank of Pittsburg v. Kirk* (1907), 216 Pa. St. 452.

*Utah.*—*McCormick v. Swem* (1909), 36 Utah 6, 102 Pac. 626; *Felt v. Bush* (1912), 126 Pac. 688.

*Washington.*—*Bradley Engineering & Mfg. Co. v. Heyburn* (1910), 56 Wash. 628, 106 Pac. 170; *Metzger v. Sigall* (1914), 83 Wash. 807, 145 Pac. 72; *Wash. Trust Co. v. Keyes* (1915), 152 Pac. 1029; *Skagit State Bank v. Moody* (1916), 150 Pac. 425.

*United States.*—*Richards v. Street* (1908), 31 App. D. C. 427; *Milton v. Pensacola Bank & Tr. Co.* (1911), 190 Fed. 126, 111 C. C. A. 166; *In re Chas. R. Partridge Lumber Co.* (1914), 215 Fed. 973.

**§ 27. When lien on instrument constitutes holder for value.** Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.<sup>1</sup> 1a

See text, § 128.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Note indorsed as collateral security held by holder in due course for value. *Griswold v. Morrison*, — Cal. App. —, 200 Pac. 62.

Pledgee although a holder in due course recovered amount of debt only because a defense. *Continental Credit Co. v. Ely* (Conn.), 100 Atl. 434.

Full amount recovered. *Jett v. Standafer*, 143 Ky. 787, 137 S. W. 513.

Amount of debt for which pledged recovered. *Elk Valley Coal Co. v. Third Nat. Bank of Lexington*, 157 Ky. 617, 163 S. W. 766.

Pledgee as lien holder is holder for value. *Harison v. Nicholson-Foley Co.*, 179 Ky. 513.

Assignee of notes as collateral after maturity subject to defenses by maker. *Sparr v. Fulton Nat. Bank*, 179 Ky. 755.

Full face value of the note recovered. *Burnes v. New Mineral Fertilizer Co.*, 218 Mass. 300, 105 N. E. 1074.

Bank's title held subject to equities where note left for collection but no assignment of note as collateral security. *Schneider v. Johnson*, 161 Mo. App. 375, 143 S. W. 78.

Holder for value to the entire amount of the collateral notes. *State Bank v. Cape Girardeau Co.*, 170 Mo. App. 662, 155 S. W. 1111.

No recovery on collateral note if principal note is wholly invalid. *Omaha Loan & Bldg. Assn. v. Cocke* (Neb.), 165 N. W. 146.

Lien on note constitutes holder a holder for value. *Southwest Nat. Bank of Commerce of Kansas City v. Todd*, — Okla. —, 192 Pac. 1096.

It was held that under the pleadings the defendant, not having raised the question of collateral and the amount of the note for which it was pledged, was not entitled to rely on section 27 and full amount was recovered. *Bailey v. Inland Empire Co.*, 75 Ore. 309, 146 Pac. 991.

One having lien on note held is holder for value. *Crane & Co. v. Hall*, — Tenn. —, 213 S. W. 414.

Whole amount of collateral security recovered. *Hillman v. Stanley*, 56 Wash. 320, 105 Pac. 816.

Interest at legal rate only was recovered in the absence of evidence as to the rate which the principal debt was to bear. *Citizens' Bank v. Limpricht*, 93 Wash. 361, 160 Pac. 1046.

Recovery of payments by maker where payee had defaulted and indorsed the note. *Dyer v. International Banking Corp.*, 262 Fed. 292.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*California*.—*Griswold v. Morrison* (Cal. App.), 200 Pac. 62.

*Connecticut*.—*Mersick v. Alderman* (1905), 77 Conn. 634, 60 Atl. 109; *Continental Credit Co. v. Ely*, — Conn. —, 100 Atl. 434.

*Illinois*.—*Peacock v. Phillips* (1910), 155 Ill. App. 514.

*Kentucky*.—*Citizens Bank v. Bank of Waddy* (1907), 126 Ky. 169, 103 S. W. 249; *Campbell v. Fourth Nat. Bank of Cincinnati* (1910), 137 Ky. 555, 126 S. W. 114; *Am. Nat. Bank v. Minor & Son* (1911), 135 S. W. 278; *Jett v. Standafer* (1911), 143 Ky. 787, 137 S. W. 513; *Elk Valley Coal Co. v. Third Nat. Bank of Lexington* (1914), 157 Ky. 617, 163 S. W. 766; *Sparr v. Fulton Bank* (1918), 201 S. W. 310; *Harrison v. Nicholson-Foley Co.*, 179 Ky. 513; *Sparr v. Fulton Nat. Bank*, 179 Ky. 755.

*Massachusetts*.—*Burnes v. New Mineral Fertil. Co.* (1914), 218 Mass. 300, 105 N. E. 1074.

*Michigan*.—*Graham v. Smith* (1908), 155 Mich. 65, 118 N. W. 726.

*Missouri*.—*Nat. Bank of Commerce in St. Louis v. Morris* (1911), 156 Mo. App. 43, 135 S. W. 1008; *State Bank of Freeport v. Cape Girardeau & C. R. Co.* (1913), 170 Mo. App. 662, 155 S. W. 1111; *Schneider v. Johnson*, 161 Mo. App. 375, 143 S. W. 78; *Central Bank of Columbia v. Lyda* (1917), 191 S. W. 245.

*New York*.—*Rogers v. Morton*, 46 Misc. Rep. 494, 95 N. Y. Supp. 49; *Batterman v. Butcher*, 95 App. Div. 213, 88 N. Y. Supp. 685; *Petrie v. Miller*, 67 N. Y. Supp. 1042, affirmed 173 N. Y. 596, 57 A. D. 17.

*Nebraska*.—*Brown v. James*, 80 Neb. 475, 114 N. W. 591; *Benton v. Sikyta*, 84 Neb. 808, 122 N. W. 60, 24 L. R. A. (N. S.) 1057; *Omaha Loan and Bldg. Assn. v. Cooke*, 165 N. W. 146.

*North Carolina.*—*Brooks v. Sullivan* (1901), 129 N. Car. 190, 39 S. E. 822; *Citizens & Marine Bank of Newport News v. Southern R. W.* (1910), 153 N. Car. 346; *J. L. Smathers & Co. v. Toxaway Hotel Co.* (1913), 78 S. E. 224.

*North Dakota.*—*Shuman v. Citizen's State Bank of Rugby* (1914), 147 N. W. 388.

*Oklahoma.*—*Southwest Nat. Bank v. Todd*, 192 Pac. 1096.

*Oregon.*—*Bailey v. Inland Empire Co.* (1915), 75 Ore. 309, 146 Pac. 991.

*Tennessee.*—*First Nat. Bank of Elgin, Ill. v. Russell* (1911), 139 S. W. 734; *Crane & Co. v. Hall*, 213 S. W. 414.

*Utah.*—*Felt v. Bush* (1912), 126 Pac. 688.

*Virginia.*—*Payne v. Zell* (1900), 98 Va. 294, 36 S. E. 379.

*Washington.*—*Bank of Montreal v. Howard* (1906), 44 Wash. 10, 86 Pac. 1115; *Hillman v. Stanley* (1909), 56 Wash. 320, 105 Pac. 816; *Canadian Bank of Commerce v. Sesnon Co.*, 68 Wash. 434, 123 Pac. 602; *German-Am. Bank of Seattle v. Wright* (1915), 148 Pac. 769; *Crewdson v. Shultz* (1919), 254 Fed. 24; *Citizens Bank v. Limpricht*, 93 Wash. 361, 160 Pac. 1046.

*Wyoming.*—*George v. Emery* (1909), 18 Wyo. 352, 107 Pac. 1.

*United States.*—*Trust Co. of St. Louis Co. v. Markee* (1910), 179 Fed. 764; *Dyer v. International Banking Corp.*, 262 Fed. 292.

§ 28. Effect of want of consideration. Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense *pro tanto* whether the failure is an ascertained and liquidated amount or otherwise.<sup>1, 1a</sup>

See text, § 68.

Cross-sections: 52.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Parol evidence admissible as against one not a bona fide holder. *Jefferson Co. Bank v. Compton*, 192 Ala. 16, 68 So. 261.

Death of a stallion making it impossible to return him not a failure of consideration. *Monticello State Bank v. Killiam* (Ark.), 192 S. W. 369.

Extent to which partial failure of consideration operative. *Ryan v. Security Savings & Commercial Bank*, — D. C. —, 271 Fed. 366.

It is error to direct a verdict for the plaintiff where evidence tends to prove a failure of consideration. *Gardner Lumber Co. v. Bank of Commerce* (Fla.), 74 So. 313.

Accord: *Glass v. Virginia-Carolina Chemical Co.* (Fla.), 74 So. 981.

Failure of consideration between the drawee and the drawer is no

defense in an action by the payee against the acceptor. *Mt. Vernon Nat. Bank v. Kelling-Karel Co.*, 189 Ill. App. 375.

Failure of consideration a defense as to purchaser after maturity. *Sparr v. Fulton Nat. Bank*, 179 Ky. 755.

Failure of consideration not a defense against a bona fide holder. *Franz v. Schiro*, 136 La. 841, 67 So. 925.

Holding in Maryland that under the general issue failure of consideration may be shown. *Morgan v. Cleaver (Md.)*, 101 Atl. 610.

Burden is on party showing want of consideration. *Long v. Conn.*, — Minn. —, 179 N. W. 644.

Failure of consideration must be pleaded. *Indiana Flooring Co. v. Rudnick*, — Mass. —, 127 N. E. 428.

Defense by one of two joint-makers. *Rowe v. Bowman*, 183 Mass. 488, 67 N. E. 636.

Accord: *Holmes v. Farris*, 97 Mo. App. 305, 311, 91 S. W. 116.

Burden of proving failure of consideration is on the defendant. *Rhodes v. Guhman*, 156 Mo. App. 344, 362, 137 S. W. 86.

Partial failure may be shown under a plea of total failure. *Nat. Tube Co. v. Ice Machine Co.*, 201 Mo. 30, 98 S. W. 620.

Accord; *Lebrecht v. Nellist*, 184 Mo. App. 334, 171 S. W. 11.

Accord: *Glasse v. King (Mo. App.)*, 195 S. W. 521.

A sufficient consideration is delivery of goods to another. *Rudolph Wurlitzer Co. v. Rossman*, 196 Mo. App. 78, 190 S. W. 636.

Since a note imports a consideration the burden is thrown upon the defendant to prove lack or failure of consideration. *Carter v. Butler*, 264 Mo. 306, 174 S. W. 399, Ann Cas. 1917A, 483.

Trial judge erred in directing a verdict for the defendant, even though plaintiff introduced the testimony of no witnesses to contradict defendant witnesses. *McCormack v. Williams*, 88 N. J. L. 170, 95 Atl. 978.

Defendant has burden of showing want of consideration. *Citizens Nat. Bank of Roswell v. Bean*, — N. M. —, 190 Pac. 1018.

Want of consideration is not a good defense unless pleaded. *Sprague v. Sprague*, 80 Hun, 285, 30 N. Y. Supp. 162.

As between remote parties a defense of no consideration must be sustained by a showing that neither party gave or received consideration. *National Park Bank v. Saitta*, 127 App. Div. 624, 111 N. Y. Supp. 927, affirmed, 196 N. Y. 548.

Defense on ground of want of consideration but defense of duress not good. *Weiss v. Rieser*, 62 Misc. Rep. 292, 114 N. Y. Supp. 983.

Necessary to plead want of consideration. *Ryan v. Sullivan*, 143 App. Div. 471, 128 N. Y. Supp. 632.

Want of consideration must be pleaded. *Sharp v. Sharp*, 145 N. Y. Supp. 386.

Burden of proving lack of consideration as a defense is on the defendant. *Gerli & Co. v. Doorly*, 151 N. Y. Supp. 574.

Contra: *Mechanics & Metals Nat. Bank v. Termini*, 93 Misc. Rep. 1. 156 N. Y. Supp. 433.

Words in note "value received" do not overcome plaintiff's evidence which shows no consideration. *Dougherty v. Salt*, 227 N. Y. 200.

Maker may urge failure of consideration against payee. *Dixon v. Miller*, — Nev. —, 184 Pac. 926.

Burden of proof to show want of consideration is on the defendant. *Piner v. Brittain*, 165 N. C. 401, 81 S. E. 462.

Where two articles were to be delivered and only one was delivered it shows a partial failure of consideration. *International Harvester Co. v. Parham (N. C.)*, 90 S. E. 503.

Maker of note which was given without consideration cannot recover from the payee. *Dickinson v. Carroll*, 21 N. D. 271, 130 N. W. 829.

Partial failure of consideration as between original parties. *Sharp v. Sharp*, 4 Ohio App. 418.

Failure of consideration between the maker and the payee is no defense to a surety when sued for contribution. *Cummins v. Line*, 43 Okla. 575, 143 Pac. 672.

The facts need not be stated. *Zebold v. Hurst* (Okla.), 166 Pac. 99.

Parol evidence sometimes admissible to show absence or failure of consideration. *Praes v. Vollintine*, 53 Wash. 137, 101 Pac. 706.

Notice of failure of consideration is a good defense. *Washington Trust Co. v. Keyes*, 88 Wash. 287, 152 Pac. 1029.

Failure of consideration not a defense against a bona fide holder. *Interstate Finance Co. v. Schroeder*, 74 W. Va. 67, 81 S. E. 552.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Jefferson Co. Bank v. Compton*, 192 Ala. 16, 68 So. 261; *United Brothers of Friendship & Sisters of Mysterious Ten v. C. S. Huffman Auditing Co.* (1918), 78 So. 864; *Conwell v. Rice* (1919), 80 So. 406.

*Arizona*.—*Hurley v. Wilky* (1916), 156 Pac. 83.

*Arkansas*.—*Williamson v. Miles* (1914), 169 S. W. 368; *Ozark Diamond Mines Co. v. Townes* (1915), 174 S. W. 515; *Haglin v. Friedman* (1915), 177 S. W. 429; *Hamburg v. Ahrens* (1915), 177 S. W. 14; *Dodd v. Axle Nut Sigh Co.* (1916), 189 S. W. 663; *Monticello State Bank v. Killiam* (Ark.), 192 S. W. 369.

*Connecticut*.—*St. Paul's Episcopal Church v. Fields* (1909), 81 Conn. 670, 72 Atl. 145; *Tice v. Moore* (1909), 82 Conn. 244, 73 Atl. 133.

*District of Columbia*.—*Ryan v. Security, etc., Bank*, 271 Fed. 366.

*Delaware*.—*Security Tr. & Safe Dep. Co. v. Duross* (1913), 86 Atl. 209.

*Florida*.—*Padgett v. Lewis*, 54 Fla. 177, 45 So. 29; *Roess Lumber Co. v. State Exchange Bank* (1915), 67 So. 188; *Odlin v. Stucky* (1919), 80 So. 291.; *Gardner Lumber Co. v. Bank of Commerce* (Fla.), 74 So. 313; *Glass v. Virginia-Carolina Chemical Co.* (Fla.), 74 So. 981.

*Idaho*.—*Daniels v. Englehart* (1910), 18 Ida. 548, 111 Pac. 3.

*Illinois*.—*Peacock v. Phillips* (1910), 155 Ill. App. 514; *Bechtel v. Marshall* (1918), 119 N. E. 619, *Mt. Vernon Nat. Bank v. Kelling-Karel Co.*, 189 Ill. App. 375.

*Kansas*.—*Lynds v. Van Valkenburgh* (1908), 77 Kans. 24, 93 Pac. 615; *McMillan v. Gardner* (1912), 88 Kans. 279.

*Kentucky*.—*Johnson v. McMillan* (1918), 199 S. W. 1070; *Sparr v. Fulton Nat. Bank* (1918), 201 S. W. 310.

*Louisiana*.—*Dicks v. Johnson* (1913), 66 La. 306, 63 So. 700; *Franz v. Schiro* (1915), 136 La. 841, 67 So. 925.

*Maryland*.—Burke v. Smith (1909), 111 Md. 624, 75 Atl. 114; Shaffer v. Bond (1917), 99 Atl. 972; Herrman v. Combs (1912), 119 Md. 41, 85 Atl. 1044; Morgan v. Cleaver (1917), 101 Atl. 610, 130 Md. 617.

*Massachusetts*.—Rowe v. Bouman, 183 Mass. 488, 67 N. E. 636; Lombard v. Bryne (1907), 194 Mass. 236, 80 N. E. 489; Centennial Electric Co. v. Morse (1917), 116 N. E. 901; Indiana Flooring Co. v. Rudnick, 127 N. E. 428.

*Michigan*.—Green v. Ostrander (1910), 160 Mich. 662, 125 N. W. 735; East Side Tr. & Sav. Bank v. McGinnis (1917), 163 N. W. 949.

*Minnesota*.—Long v. Conn, 179 N. W. 644.

*Mississippi*.—Moore Dry Goods Co. v. Ainsworth (1916), 70 So. 885.

*Missouri*.—Jobes v. Wilson (1910), 124 S. W. 548; Holmes v. Farris, 97 Mo. App. 305, 91 S. W. 116; Nat. Bank of Commerce in St. Louis v. Morris (1911), 156 Mo. App. 43, 135 S. W. 1008; Rhodes v. Guhman (1911), 156 Mo. App. 344, 137 S. W. 86; Link v. Jackson (1911), 158 Mo. App. 63, 139 S. W. 588; Newburg St. Bank v. Heflin (1915), 175 S. W. 297; Citizens Nat. Bank v. Bombauer (1916), 189 S. W. 651; Hadley v. Greenville (1916), 187 S. W. 597; Glasse v. King (1917), 195 S. W. 521; Sebrecht v. Nellist, 184 Mo. App. 334, 171 S. W. 11; Rudolph Wurlitzer Co. v. Rossman, 196 Mo. App. 78, 190 S. W. 636; Nat. Tube Co. v. Ice Machine Co., 201 Mo. 30, 98 S. W. 620; Carter v. Butler, 264 Mo. 306, 174 S. W. 399, Ann Cas. 1917A, 483.

*Nebraska*.—Douglas v. Burton (1915), 154 N. W. 718.

*New Jersey*.—McCormack v. Williams (1915), 88 N. J. L. 170, 95 Atl. 978; Bank of Roselle v. Dorvall (1916), 98 Atl. 476.

*New Mexico*.—Citizens etc., Bank v. Bean, 190 Pac. 1018.

*New York*.—Batterman v. Butcher (1904), 95 A. D. 213, 88 N. Y. Supp. 685; Rogers v. Morton (1905), 46 Misc. 494, 95 N. Y. Supp. 49; Rice v. Eisler (1907), 119 A. D. 132; Joveshoff v. Rockey (1908), 109 N. Y. Supp. 818, 58 Misc. 559; Valley Dew Distilling Co. v. Ritzmann (1908), 110 N. Y. Supp. 917; Wallabout Bank v. Peyton (1908), 123 A. D. 727, 108 N. Y. Supp. 42; Nat. Park Bank v. Saitta, 111 N. Y. Supp. 927, 127 A. D. 624; Ferguson v. Netter (1910), 126 N. Y. Supp. 107, 141 A. D. 274; Ginsberg v. Shurman (1911), 128 N. Y. Supp. 653; Weiss v. Rieser, 114 N. Y. Supp. 983, 62 Misc. Rep. 292; Newgass v. Shulhof (1911), 128 N. Y. Supp. 644; Ryan v. Sullivan (1911), 128 N. Y. Supp. 632, 143 A. D. 471; Mechan. & Metals Nat. Bank v. Termini (1915), 156 N. Y. Supp. 433; Sharp v. Sharp, 145 N. Y. Supp. 386; Gerli & Co. v. Doorly, 151 N. Y. Supp. 574; Steinberger v. Hittelman (1915), 156 N. Y. Supp. 320; Miller v. Campbell (1916), 160 N. Y. Supp. 834; Malone v. Hirsh (1917), 167 N. Y. Supp. 723; In re Wiles (1918), 168 N. Y. Supp. 940; Daugherty v. Salt, 227 N. Y. 200.

*Nevada*.—Divon v. Miller (Nev.), 184 Pac. 926.

*North Carolina*.—Hardy v. Mitchell (1911), 156 N. Car. 76, 72 S. E. 95, 161 N. Car. 351 (1913); Piner v. Brittain (1914), 81 S. E. 462; International Harvester Co. v. Parham (N. C.), 90 S. E. 503.

*North Dakota*.—Walters v. Rock (1908), 18 N. Dak. 45, 115 N. W. 511; Dickinson v. Carroll, 21 N. D. 271, 130 N. W. 829; First State Bank of Eckman v. Kelly (1915), 152 N. W. 125; Holbert v. Weber, 36 N. D. 106, 161 N. W. 560.

*Ohio*.—Ginn v. Dolan (1909), 81 Ohio St. 121, 90 N. E. 141; Sharp v. Sharp, 4 Ohio App. 418.

*Oklahoma*.—Cummins v. Line, 43 Okla. 575, 143 Pac. 672; Campbell v. Newton & Driskoll (1915), 152 Pac. 841; Zebold v. Hurst (1917), 166 Pac. 99; Hannon v. Fink (1917), 167 Pac. 1152; Bank of Commerce of Sulphur v. Webster, (1918), 172 Pac. 943.

*Pennsylvania*.—Marr's Nat. Bank v. Hughes (1917), 100 Atl. 542.

*Utah*.—Smith v. Brown (1917), 165 Pac. 468.

*Vermont*.—Parry & Jones v. Empire Granite & Quarry Co. (1916), 97 Atl. 985.

*Washington*.—Praes v. Vollintine (1909), 53 Wash. 137, 101 Pac. 706; Reardon v. Cockrell (1909), 54 Wash. 400, 103 Pac. 457; Citizens Bank & Trust Co. v. Limpricht (1916), 160 Pac. 1046; Hamilton v. Mihills (1916), 159 Pac. 887; Washington Trust Co. v. Keyes, 88 Wash. 287, 152 Pac. 1029; Hamilton v. Ramage (1916), 89 Wash. 649, 156 Pac. 151; City Nat. Bank v. Shelton Elec. Co. (1917), 164 Pac. 993; Hoffman v. M. Gottstein Inv. Co. (1918), 172 Pac. 573.

*West Virginia*.—Interstate Finance Co. v. Schroeder (1914), 74 W. Va. 67, 81 S. E. 552.

*Wisconsin*.—Marling v. Fitzgerald (1909), 138 Wis. 93.

*United States*.—Mowles v. Lorrimer (1914), 212 Fed. 155 (C. C. A., 3d Ct.); Taylor v. First Nat. Bank of Aurora (1914), 212 Fed. 898 (C. C. A., 6th Ct.); Yates Center Nat. Bank v. Schaede (1917), 240 Fed. 240; Cutler v. Fry (1917), 240 Fed. 238.

**§ 29. Liability of accommodation party.** An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.<sup>1</sup> <sup>1a</sup>

See text, §§ 124, 70.

In Illinois the words, "without receiving value therefor, and " after the word "indorser" are omitted and the following comes at the end of the section: "and in case a transfer after maturity was intended by the accommodating party notwithstanding such holder acquired title after maturity."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Liability of bank for failure to apply deposit of accommodated party after notes become due and held by said bank. Tatum v. Commercial Bank and Trust Co., 193 Ala. 120, 69 So. 508, L. R. A. 1916C, 767.

Accommodation maker liable to holder for value. Green v. McCord, — Ala. —, 85 So. 750.

Plaintiff must prove himself an accommodating party by the preponderance of the evidence. *Fisher v. Rice Growers Bank*, 122 Ark. 600, 184 S. W. 36.

Check made by third party is an accommodation check on which the maker is liable. *First Nat. Bank v. Allen*, — Ark. —, 216 S. W. 1039.

Officers of bank signing as individuals are accommodation makers. *Felker v. Boatmen's Bank*, — Ark. —, 225 S. W. 306.

Indorsement to indemnify against loss on account of existing liability of third person as accommodation indorsing. *Griswold v. Morrison*, — Cal. App. —, 200 Pac. 62.

Accommodation indorser's rights. *Staples v. Port Graham Coal Co.*, 46 App. D. C. 542.

Transfer without indorsement gives the title to transferee subject to defense then existing. *Sanderson v. Clark*, — Idaho —, 194 Pac. 472.

Accommodation maker liable to indorsee on note when indorsed as collateral security for a debt. *Many, Blanc & Co. v. Krueger*, 153 Ill. App. 327.

Liability of accommodation indorser. *Elgin Nat. Bank v. Goecke*, 213 Ill. App. 559.

Bank paid seller for goods. The seller for bank's accommodation drew a draft on buyer. The bank is not holder in due course. *Shireman v. Second Nat. Bank of New Albany*, — Ind. App. —, 124 N. E. 712.

One signing paper of another to conform to rule of bank held accommodating party. *German-American State Bank v. Watson*, 99 Kan. 686, 163 Pac. 637.

Definition of "accommodation." *Sales v. Martin*, 173 Ky. 616, 191 S. W. 480.

Accommodation note deposited as collateral security and defenses. *Black v. Bank of Westminster*, 96 Md. 399, 54 Atl. 88.

If payee knows one of makers of a note not the principal debtor he does not thereby accept him as surety. *Jamesson v. Citizens' Nat. Bank (Md.)*, 99 Atl. 994.

Check given to pay overdraft of a customer creates a liability on accommodation paper. *Neal v. Wilson*, 213 Mass. 336, 100 N. E. 544.

Payee's indorsement varied by parol to show accommodation paper. *State Bank v. Pangerl (Minn.)*, 165 N. W. 479.

Accommodation indorser being in effect a surety or co-indorser may set up usury as a defense. *Osborne v. Frederick*, 134 Mo. App. 449, 114 S. W. 1045.

Note given for auto purchased for A and the maker of note not necessarily accommodation instrument. *Overland Auto Co. v. Winter (Mo. App.)*, 180 S. W. 561.

Indorser of a note for accommodation of the payee held not liable thereon to payee although indebted to him if he signed under that representation. *Cox v. Heagy (Mo.)*, 184 S. W. 494.

Evidence admissible to vary agreement as against one not a bona fide holder. *Schlamp v. Maneval (Mo. App.)*, 190 S. W. 658.

Accommodation maker liable although holder had knowledge of such status. *First State Bank of Hilger v. Lang*, — Mont. —, 174 Pac. 597.

When accommodation maker not released. *Merchants Nat. Bank of Billings v. Smith*, — Mont. —, 196 Pac. 523.

Accommodation note transferred by the accommodated payee at a greater discount than the legal rate is unenforceable by the transferee. *Strickland v. Henry*, 66 App. Div. 23, 73 N. Y. Supp. 12.

Corporation has no power to make accommodation indorsement. *Oppenheim v. Simon Reigel Cigar Co.*, 90 N. Y. Supp. 355.



One identifying payee and indorsing check at request of bank teller liable as accommodation indorser. *Smith v. State Bank*, 54 Misc. Rep. 550, 104 N. Y. Supp. 750.

Accommodation maker liable to indorsee on note in payment of antecedent debt. *English v. Schlesinger*, 55 Misc. Rep. 584, 105 N. Y. Supp. 989.

Parol evidence admissible to show one an accommodation party. *Ryan v. Sullivan*, 143 App. Div. 471, 128 N. Y. Supp. 632.

Wife making note in payment for labor on houses constructed by her husband on her property is not an accommodation maker. *Brayer v. Edell*, 163 N. Y. Supp. 989.

When transferee is ignorant that paper is accommodation paper he may recover although he discounts at a greater rate than the legal rate. *Kennedy v. Hayman*, 167 N. Y. Supp. 311.

Payee accommodation indorser may buy the paper of the holder and sue the maker. *Blanchard v. Blanchard*, 201 N. Y. 134, 94 N. E. 630.

Parol evidence as to accommodation party. *Haddock, Blanchard & Co. v. Haddock*, 192 N. Y. 499, 85 N. E. 682.

Corporation has no implied power to execute accommodation paper. *Jacobus v. Jamestown Mantel Co.*, 211 N. Y. 154, 105 N. E. 210.

Accommodation note transferred by the accommodated maker at discount greater than legal rate unenforceable. *Bruck v. Lambeck*, 63 Misc. Rep. 117, 118 N. Y. Supp. 494.

Accord. *Simpson v. Hefter*, 42 Misc. Rep. 482, 87 N. Y. Supp. 243.

Accord. *Sabine v. Paine*, 166 App. Div. 9, 151 N. Y. Supp. 735, affirmed 223 N. Y. 401, 119 N. E. 849.

Burden is on holder to prove he had no notice that the corporation was an accommodation party. *Durbrow v. Swedish Iron & Steel Corp.*, 95 Misc. Rep. 160, 158 N. Y. Supp. 701.

Accord. *Nat. Bank v. Snyder Co.*, 117 App. Div. 370, 102 N. Y. Supp. 478.

Accord. *Abbott v. Le Prevost*, 166 App. Div. 40, 151 N. Y. Supp. 616.

Accord. *Bradley Engineering Co. v. Heyburn*, 56 Wash. 628, 106 Pac. 170.

Oral argument between all parties not admissible to show note to be paid by accommodated party. *Gerli v. National Mill Supply Co.*, 78 N. J. 1, 73 Atl. 252.

Defendant's endorsement for plaintiff's accommodation held to be a question of fact for the jury. *Morris County Brick Co. v. Austin*, 79 N. J. L. 273, 75 Atl. 550.

Indorsement for accommodation a good defense against accommodated party. *Ladd v. Ardmon State Bank*, 43 Okla. 502, 143 Pac. 170.

Accommodation maker liable though principal maker may not be on account of infancy. *Hodgins v. N. W. Finance Co.*, 46 Okla. 95, 148 Pac. 717.

When extension of time does not affect accommodation makers. *Oklahoma State Bank of Sayer v. Seaton*, — Okla. —, 170 Pac. 477.

Successive accommodation parties as between themselves are liable in the order in which their names appear. *Noble v. Beeman-Spaulding Co.*, 65 Ore. 93, 131 Pac. 1006, 46 L. R. A. (N. S.) 162.

Accommodation maker liable even though bank knew he was such accommodation maker. *Farmers State Bank of North Powder v. Forsstrom*, — Ore. —, 173 Pac. 935.

Note procured for an attorney's accommodation with no payee named after attorneys death under circumstances may be recovered upon by another. *Wolfgang v. Shirley*, 239 Pa. 408, 86 Atl. 1011.

Corporation liable on accommodation paper to a holder in due course. *Cox & Sons Co. v. Northampton Brewing Co.*, 245 Pa. 418, 91 Atl. 859, Ann. Cas. 1916A, 86.

Wife signing note with her husband and given in payment for groceries is liable on note though not personally liable on the account. *Wilbour v. Hawkins*, 38 R. I. 119, 94 Atl. 856.

Note to a bank for overdue interest on the note of another is accommodation paper. *Skagit State Bank v. Moody*, 86 Wash. 286, 150 Pac. 425, L. R. A. 1916A, 1215.

Accommodation note may be negotiated for the first time after maturity to one having knowledge of the accommodation and accommodation maker be liable. *Marling v. Jones*, 138 Wis. 82, 119 N. W. 931, 131 Am. St. Rep. 996.

This case is contrary to the general rule that when accommodation paper is given it is the expectation and understanding of the parties that it shall be taken care of at maturity.

Accord with Wisconsin case. *Mersick v. Alderman*, 77 Conn. 634, 60 Atl. 109, 2 Ann. Cas. 254.

Contra to Wisconsin case. *Cottrell v. Watkins*, 89 Va. 801, 817.

An accommodation note once negotiated and paid at maturity is extinguished and cannot be re-issued and bind the one who signed for accommodation. *Comstock v. Buckley*, 141 Wis. 228, 124 N. W. 414.

Accord. *Cominsky v. Coleman*, 114 N. Y. Supp. 875.

One receiving one-half the proceeds of the discount is not an accommodation maker. *Reyburn v. Queen City Savings Bank & Trust Co.*, 171 Fed. 609, 96 C. C. A. 373.

Defendant's indorsement held to be made for accommodation of the maker of a note and not of the bank. *Nalitzky v. Williams*, 237 Fed. Rep. 802, 151 C. C. A. 44.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Tatum v. Commercial Bank & Trust Co.* (1914), 185 Ala. 249, 64 So. 561; *Green v. McCord*, 85 So. 750.

*Arizona*.—*Cowan v. Ramsay* (1914), 140 Pac. 501.

*Arkansas*.—*Fisher v. Rice Grower's Bank* (1916), 122 Ark. 600, 184 S. W. 36; *Felker v. Boatmen's Bank*, 225 S. W. 306; *First Nat. Bank v. Allen*, — Ark. —, 216 S. W. 1039.

*California*.—*Backer v. Grunnett* (1919), 178 Pac. 312; *Griswold v. Morrison*, — Cal. App. —, 200 Pac. 62.

*Connecticut*.—*Mersick v. Alderman* (1905), 77 Conn. 634, 60 Atl. 109; *Knapp Co. v. Tidewater Coal Co.* (1912), 85 Conn. 147, 81 Atl. 1063.

*Delaware*.—*Security Tr. & Safe Dep. Co. v. Duross* (1913), 27 Del. 111, 86 Atl. 209.

*Florida*.—*Bass v. Geiger* (1916), 73 So. 796; *Idaho-Sanderson v. Clark*, 194 Pac. 472.

*Illinois*.—*Many, Blanc & Co. v. Krueger*, 153 Ill. App. 327; *Graves v. Neeves* (1913), 183 Ill. App. 235; *Biossat v. Louis* (1913), 184 Ill. App. 436; *Burr v. Beckler* (1914), 106 N. E. 206, 264 Ill. 230; *Elgin Nat. Bank v. Goecke*, 213 Ill. App. 559.

*Indiana*.—Shireman v. Second Nat. Bank of New Albany, — Ind. App. —, 124 N. E. 712.

*Iowa*.—Banker's Iowa State Bank v. Mason Hand Leather Co. (1902), 90 N. W. 612, 121 Iowa 570; Farmers Loan & Tr. Co. v. Brown (1917), 165 N. W. 70.

*Kansas*.—Lill v. Gleason (1914), 142 Pac. 287; German-American State Bank v. Watson (1917), 163 Pac. 637, 99 Kans. 686; First Nat. Bank v. Stroup (1919), 177 Pac. 836.

*Kentucky*.—Sales v. Martin, 173 Ky. 616, 191 S. W. 480; Owensboro Sav. Bank & Tr. Co.'s Receiver v. Haynes (1911), 136 S. W. 1004 Young v. Exchange Bank of Ky., 152 Ky. 293, 153 S. W. 444, Ann Cas. 1915B, 148.

*Louisiana*.—N. & C. Newman, Limited v. Pellerin (1910), 125 La. 67, 51 So. 70; Commercial Nat. Bank v. Sanders (1916), 71 So. 891; First State Bank v. Davis (1916), 139 La. 723, 72 So. 185; Schaffter v. Irwin (1916), 139 La. 92, 71 So. 241.

*Maine*.—Kerr v. Dyer (1917), 102 Atl. 178.

*Maryland*.—Weant v. Southern Tr. & Dep. Co. (1910), 112 Md. 463, 77 Atl. 289; Jamesson v. Citizen's Nat. Bank (1917), 99 Atl. 994, 130 Md. 75; Bergen v. Tremble (1917), 101 Atl. 137; Black v. Bank of Westminster, 96 Md. 399, 54 Atl. 88.

*Massachusetts*.—Rowe v. Bowman (1903), 183 Mass. 488, 67 N. E. 636; East Bridgewater Sav. Bank v. Bates (1906), 191 Mass. 110; Lowell v. Bickford (1909), 201 Mass. 543, 88 N. E. 1; Nesson v. Miller (1910), 205 Mass. 515; Neal v. Scherber (1911), 207 Mass. 323, 39 N. E. 628; Union Tr. Co. v. McGinty (1912), 212 Mass. 205, 98 N. E. 679; Neal v. Wilson (1913), 213 Mass. 336, 100 N. E. 544; Connors v. Sullivan (1915), 108 N. E. 503; Miller v. Levitt (1917), 115 N. E. 431; Middleborough Nat. Bank v. Cole, 191 Mass. 168, 77 N. E. 781.

*Michigan*.—Ensign v. Dunn (1914), 148 N. W. 343; East Side Tr. & Sav. Bank v. McGinnis (1917), 163 N. W. 949.

*Minnesota*.—Bank of Montreal v. Bucher (1916), 157 N. W. 1070.

*Missouri*.—Osborne v. Frederick, 134 Mo. App. 449, 114 S. W. 1045; First Nat. Bank of Jefferson City v. Asel (1910), 154 Mo. App. 228; Lehnhard v. Sedway (1911), 160 Mo. App. 83, 141 S. W. 430; Citizen's Bank of Senath v. Douglass (1913), 161 S. W. 601; Golden Banking Co. v. Munn, 184 Mo. App. 515, 170 S. W. 448; Golden City Banking Co. v. Morrow (1914), 179 S. W. 448; Overland Auto Co. v. Winter (Mo. App.), 180 S. W. 561; Cox v. Hagy (1916), 184 S. W. 494; Eaves v. Keeton (1917), 193 S. W. 629; Bank of Dexter v. Simmons (1918), 204 S. W. 837; Kage v. Oates (1919), 208 S. W. 126; Bank of Melyville v. Lee (1919), 208 S. W. 143.

*Montana*.—First Nat. Bank of Hilger v. Lang (1918), 174 Pac. 597; Merchants, etc., Bank v. Smith, 196 Pac. 523.

*Nebraska*.—Citizens Bank v. Frederickson (1909), 83 Neb. 755; State Bank of Omaha v. Huffman (1916), 160 N. W. 115.

*New Jersey*.—Gerli v. Nat. Mill Supply Co. (1909), 78 N. J. L. 1, 73 Atl. 252; Morris Co. Brick Co. v. Austin (1910), 79 N. J. L. 273, 75

Atl. 550; *Clark v. Barthold* (1915), 87 N. J. L. 255, 93 Atl. 699; *First Nat. Bank v. Dorvall*, 89 N. J. L. 298, 98 Atl. 476.

*New York*.—*Pryor v. Storke* (1899), 37 A. D. 364; *Citizens Nat. Bank v. Lilienthal* (1899), 40 A. D. 609; *Howard v. Van Gieson* (1900), 56 A. D. 217; *Fleitman v. Ashley* (1901), 60 A. D. 201; *Strickland v. Henry* (1901), 66 A. D. 23, 73 N. Y. Supp. 121; *Nat. Citizens Bank v. Toplitz* (1903), 81 A. D. 593, 81 N. Y. Supp. 422; *Roseman v. Mahoney* (1903), 86 A. D. 377, 83 N. Y. Supp. 749; *Packard v. Windholz* (1903), 40 Misc. 347, 84 N. Y. Supp. 666; affirmed 88 A. D. 365 (1902); *Simpson v. Hefter* (1904), 42 Misc. 482, 87 N. Y. Supp. 243; *Batterman v. Butcher* (1904), 95 A. D. 213, 88 N. Y. Supp. 685; *Oppenheim v. Reigal Cigar Co.* (1904), 90 N. Y. 355; *Blag & Eng. Co. v. Nor. Bank*, 206 N. Y. 400; *Met. Pr. Co. v. Springer* (1904), 90 N. Y. Supp. 376; *Hover v. Magley* (1905), 48 Misc. 430; 96 N. Y. Supp. 925; *Westheimer v. Helmbold* (1905), 109 A. D. 854; *Schlesinger v. Kelly* (1906), 114 A. D. 546, 99 N. Y. Supp. 1083; *Nat. Bank of Newport v. Snyder Mfg. Co.* (1907), 117 A. D. 370, 102 N. Y. Supp. 478; *Smith v. State Bank* (1907), 104 N. Y. Supp. 750, 54 Misc. 550, 104 N. Y. Supp. 750; *English v. Schlesinger* (1907), 55 Misc. 584, 105 N. Y. Supp. 989; *The Gansevort Bank of N. Y. v. Gilday* (1907), 104 N. Y. Supp. 271, 53 Misc. 107; *Sabine v. Paine*, 151 N. Y. Supp. 735, 161 A. D. 9, affirmed 223 N. Y. 401, 119 N. E. 849; *Durbrow v. Swedish Iron & Steel Corp.*, 158 N. Y. Supp. 701, 95 Misc. Rep. 160; *Haddock, Blanchard & Co. v. Haddock* (1908), 192 N. Y. Supp. 499, 82 N. E. 682, 103 N. Y. Supp. 584; *Cominsky v. Coleman*, 114 N. Y. Supp. 875; *Witteman v. Glass* (1909), 117 N. Y. Supp. 940; *Bruck v. Lambeck*, 118 N. Y. Supp. 494, 63 Misc. Rep. 117; *Uvalde Asphalt Paving Co. v. Nat. Trading Co.* (1909), 135 A. D. 391, 120 N. Y. Supp. 11; *Easton Furniture Mfg. Co. v. Caminez* (1911), 131 N. Y. Supp. 157; *Blanchard v. Blanchard* (1911), 201 N. Y. 134, 94 N. E. 630, 133 A. D. 937, affirming s. c., 133 A. D. 937 (1909), without opinion; *Easton Mfg. Co. v. Caminez* (1911), 146 A. D. 436; *Martin L. Hall v. Todd* (1912), 139 N. Y. Supp. 111; *Building & Engineering Co. v. Northern Bank of N. Y.* (1912), 206 N. Y. 400; *Jacobus v. Jamestown Mantel Co.*, 211 N. Y. 154, 105 N. E. 210; *Spencer & Co. v. Brown* (1913), 143 N. Y. Supp. 994; *Neponset Nat. Bank v. Dunbar* (1913), 143 N. Y. Supp. 174, 158 A. D. 5; *Cleary v. Dykeman* (1914), 146 N. Y. Supp. 611; *Abbott v. LeProvost* (1915), 151 N. Y. Supp. 616; *Grannis v. Stevens* (1916), 111 N. E. 263, 216 N. Y. Supp. 583; *Brayer v. Edell* (1917), 163 N. Y. Supp. 989; *Kenedy v. Heyman* (1918), 167 N. Y. Supp. 311.

*New Mexico*.—*First Sav Bank & Tr. Co. v. Flowinoy* (1918), 171 Pac. 793.

*North Carolina*.—*Brown Carriage Co. v. Dowd* (1911), 71 S. E. 721.

*North Dakota*.—*First St. Bank of Eckman v. Kelly* (1915), 152 N. W. 125; *First Nat. Bank of McClukly v. Meyer* (1915), 152 N. W. 567.

*Ohio*.—*Richards v. Market Ex. Bank* (1910), 81 Ohio St. 348, 55 Ohio Law Bull. 20.

*Oklahoma*.—*Bank of Carrollton, Miss., v. Latting* (1913), 130 Pac. 144; *Ladd v. Ardmore State Bank*, 43 Okla. 502, 143 Pac. 170; *Hodgins v. N. W. Finance Co.*, 46 Okla. 95, 148 Pac. 717; *Fue v. Peoples Bank & Trust Co.* (1916), 156 Pac. 683; *Oklahoma Bank v. Seaton* (1918), 170 Pac. 477.

*Oregon*.—*White v. Savage* (1906), 48 *Oreg.* 604, 87 *Pac.* 1040; *Cellers v. Meachem* (1907), 49 *Oreg.* 186, 104 *L. R. A. (N. S.)* 133; *Lumbermen's Nat. Bank of Portland v. Campbell* (1912), 61 *Oreg.* 123, 121 *Pac.* 427; *Hunter v. Harris* (1912), 63 *Oreg.* 505, 127 *Pac.* 786; *Noble v. Beeman-Spaulding-Woodwar Co.* (1913), 65 *Ore.* 93, 131 *Pac.* 1006; *Farmers' State Bank of North Powder v. Forsstroni* (1918), 173 *Pac.* 935.

*Pennsylvania*.—*Chambers v. McLean* (1903), 24 *Pa. Super Ct.* 567; *Diffenbacher's Estate* (1906), 31 *Pa. Super. Ct.* 35; *Federal Nat. Bank v. Cross Creek Co.* (1908), 220 *Pa. St.* 39, 68 *Atl.* 1018; *Ott v. Seward* (1908), 221 *Pa.* 630; *Wolfgang v. Shirley* (1913), 239 *Pa.* 408; 86 *Atl.* 1011; *Manlini v. Serrano* (1914), 28 *Phil. Rep.* 640; *Cox & Sons Co. v. Northampton Brewing Co.*, 245 *Pa.* 418, 91 *Atl.* 859, *Ann Cases* 1916A.; *Ross v. Eyre* (1918), 103 *Atl.* 894; *Edward E. Buhler Co. v. Childester* (1919), 105 *Atl.* 52.

*Rhode Island*.—*Wilbour v. Hawkins* (1915), 38 *R. I.* 119, 94 *Atl.* 856; *Lee v. Benjamin* (1918), 102 *Atl.* 713.

*Tennessee*.—*Farmers & Merchants Bank v. Bank of Rutherford* (1905), 115 *Tenn.* 64, 88 *S. W.* 939; *Nolan v. H. E. Wilcox Motor Co.* (1917), 195 *S. W.* 581; *Noelan v. Wilcox Motor Co.* (1917), 195 *S. W.* 581.

*Texas*.—*Houston Trans. Co. v. Paine* (1917), 193 *S. W.* 188.

*Utah*.—*Wostenholme v. Smith* (1908), 34 *Utah* 300, 97 *Pac.* 329.

*Virginia*.—*Cottrell v. Watkins*, 89 *Va.* 801.

*Washington*.—*Bradley Engineering & Mfg. Co. v. Heyburn* (1910), 56 *Wash.* 628, 106 *Pac.* 170; *Gleeson v. Lichty* (1911), 62 *Wash.* 656, 114 *Pac.* 518; *Handsaker v. Pederson* (1912), 71 *Wash.* 218; *Metzger v. Sigall* (1914), 145 *Pac.* 72; *Northern Bank & Trust Co. v. Graves* (1914), 79 *Wash.* 411, 140 *Pac.* 328; *Pease v. Syler* (1914), 138 *Pac.* 310; *Skagit State Bank v. Moody* (1916), 86 *Wash.* 286, 150 *Pac.* 425.

*West Virginia*.—*First Nat. Bank of Hinton v. Plumley* (1915), 87 *S. E.* 94.

*Wisconsin*.—*Bank of Monticello v. Dooly* (1902), 113 *Wis.* 590; *Pelton v. Spider Lake S. & L. Co.* (1903), 117 *Wis.* 569; *Welch v. Kukuk* (1906), 128 *Wis.* 419, 107 *N. W.* 301; *Marling v. Jones* (1909), 138 *Wis.* 82, 119 *N. W.* 931; *German Nat. Bank v. Barber* (1914), 149 *N. W.* 767; *Comstock v. Buckley* (1910), 141 *Wis.* 227, 124 *N. W.* 414; *Schoenwetter v. Schoenwetter* (1916), 164 *Wis.* 131, 159 *N. W.* 737.

*United States*.—*In re Troy & Cohoes Shirt Co.*, 136 *Fed. Rep.* 420; *In re Hopper-Morgan Co.*, 156 *Fed.* 525; *Willard v. Crook* (1903), 21 *App. D. C.* 237; *Reyburn v. Queen City Sav. Bank & Trust Co.* (1909), 171 *Fed.* 609, 96 *C. C. A.* 373; *In re McCord* (1909), 174 *Fed.* 72; *Trust Co. of St. Louis Co. v. Markee* (1910), 179 *Fed.* 764 (*Pa.*); *Bluthenthal & Bickart v. Carson* (1911), 37 *A. C. (D. C.)* 118; *La Normandie Hotel Co. v. Security Trust Co.* (1912), 38 *A. C. (D. C.)* 187; *Howell v. Commercial Nat. Bank* (1913), 40 *A. C. (D. C.)* 370; *Wilson v. Knowles* (1914), 213 *Fed.* 782 (*C. C. A.*, 2d *Ct.*); *Leonard v. State Exch. Bank of Elk City* (1916), 236 *Fed.* 316; *Nalitzky v. Williams*, 237 *Fed. Rep.* 802, 151 *C. C. A.* 44.

## ARTICLE III.

### NEGOTIATION.

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|--|---|
| §30. What constitutes negotiation.                         | §42. Effect of instrument drawn or indorsed to a person as cashier. |
| 31. Indorsement; how made.                                 | 43. Indorsement where name is misspelled, et cetera.                |
| 32. Indorsement must be of entire instrument.              | 44. Indorsement in representative capacity.                         |
| 33. Kinds of indorsement.                                  | 45. Time of indorsement; presumption.                               |
| 34. Special indorsement; indorsement in blank.             | 46. Place of indorsement; presumption.                              |
| 35. Blank indorsement; how changed to special indorsement. | 47. Continuation of negotiable character.                           |
| 36. When indorsement restrictive.                          | 48. Striking out indorsement.                                       |
| 37. Effect of restrictive indorsement; rights of indorsee. | 49. Transfer without indorsement; effect of.                        |
| 38. Qualified indorsement.                                 | 50. When prior party may negotiate instrument.                      |
| 39. Conditional indorsement.                               |   |
| 40. Indorsement of instrument payable to bearer.           |   |
| 41. Indorsement where payable to two or more persons.      |   |

Sections 30 to 50 above are the sections used by the commissioners.

See table of corresponding sections of the law in the various states and territories beginning on page 360.

**§ 30. What constitutes negotiation.** An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.<sup>1, 1a</sup>

See text, § 13.

Cross sections 191, 8, 9, 17 subd. 6.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Transferee must plead the provisions of note as to whether payable to order or bearer. *German-Am. Nat. Bank v. Lewis*, 9 Ala. App. 352, 63 So. 741.

Note is negotiated when delivered to payee or indorsee. *Ex Parte Goldberg & Lewis*, 191 Ala. 356, 67 So. 839, L. R. A. 1915F, 1139.

Note indorsed in blank passes by delivery and need not be indorsed. *Davis v. First Nat. Bank*, 192 Ala. 8, 68 So. 261.

Indorsement imports delivery. *Sherrill v. Merchants, etc., Bank* (Ala.), 70 So. 723.

Pleading must show how transfer to plaintiff made. *Wilson v. Weaver* (Ala. App.), 77 So. 238.

Note assigned by separate writing and payable to bearer is negotiated in hands of indorsee. *Davis v. Florey* (Ala. App.), 77 So. 413.

Instruments payable to order must be indorsed. *Jones v. Bell*, — Ala. —, 77 So. 998.

Transfer of note and mortgage with indorsement on mortgage. *Slaughter v. Green*, — Ala. —, 87 So. 358.

Pleading alleging that payee "indorsed and transferred a note" is sufficient. *Louisville Co. v. International Trust Co.*, 18 Colo. App. 345, 71 Pac. 898.

Delivery not affected by after endorsement and guaranty of payment. *McKee v. District Nat. Bank*, 38 App. Cas. (D. C.), 465.

Where defendant gave a cashier authority to collect notes he is bound if the latter abstracts them and delivers them to a bona fide purchaser. *Irwin v. Deming*, 142 Iowa 299, 120 N. W. 645.

A note indorsed by payee to his principal and held by payee until death is not delivered. *Young v. Hayes* (Iowa), 165 N. W. 391.

Indorsement by rubber stamp. *State Savings Bank of Leavenworth v. Krug*, — Kan. —, 193 Pac. 899.

Note negotiated before delivery to payee. *Liberty Trust Co. v. Tilton*, 217 Mass. 462, 105 N. E. 605, L. R. A. 1915B, 144.

Delivery to an agent with authority to borrow money is sufficient delivery even if agent borrows money for himself. *Sublette v. Brewington*, 139 Mo. App. 410, 122 S. W. 1150.

When holder is not agent of payee but payee of note payable to order. *Scotland County Nat. Bank v. Hohn*, 146 Mo. App. 699, 125 S. W. 539.

One to whom note is indorsed for collection, who in turn indorses it to another may successfully prosecute the claim thereon after his indorsee has returned the note to him. *Carter v. Butler*, 264 Mo. 306, 174 S. W. 399, Ann. Cas. 1917A, 483.

Indorsement and delivery constitutes negotiation. *American Forest Co. v. Hall*, — Mo. —, 216 S. W. 740.

Notes payable to X or bearer will pass by delivery. *J. I. Case Threshing Machine Co. v. Simpson*, 54 Mont. 316.

When bill of exchange or note is transferred in due course. *Merchants Nat. Bank of Billings v. Smith*, — Mont. —, 196 Pac. 523.

Oral agreement not to negotiate note is inadmissible in evidence. *Benton v. Sikyta*, 84 Neb. 808, 122 N. W. 61, 24 L. R. A. (N. S.) 1057n.

Check paid by drawee bank not thereafter negotiable. *Aurora State Bank v. Hayes-Eames Elevator Co.*, 88 Neb. 187, 129 N. W. 279.

Evidence explaining indorsement does not bring holder within due course rule. *First Nat. Bank of Shenandoah v. Kelgord*, 91 Neb. 178, 135 N. W. 548.

Denial of transfer for value in a pleading is allegation of fact. *Rogers v. Morton*, 46 Misc. Rep. 494, 95 N. Y. Supp. 49.

A check made payable to who indorses it to Y and is to deliver same to Y is delivered in so far as the maker is interested. *Wolfin v. Security Bank of N. Y.*, 170 App. Div. 519, 156 N. Y. Supp. 474, affirmed, 218 N. Y. 709.

Holder has only equitable interest where payee failed to sign indorsement. *Critchler v. Ballard*, — N. C. —, 104 S. E. 134,

Note payable to specified payee must be indorsed by payee. *Stevens v. Pierce*, — Okla. —, 193 Pac. 417.

When evidence explains indorsement and plaintiff is holder in due course. *Gardner v. Wiley*, 46 Ore. 96, 79 Pac. 341.

Essentials of negotiation of a cashier's check. *Seaman v. Muir*, 72 Ore. 583, 144 Pac. 121.

Indorsement in blank renders instrument payable to bearer. *Dominion Trust Co. v. Hildner*, 243 Pa. 253, 90 Atl. 69.

Witnesses's statement that note was negotiated is not sufficient to rebut plea of non-indorsement. *Capitol Hill State Bank v. Rawlins Nat. Bank*, 24 Wyo. 423, 160 Pac. 1170.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Wilson v. Weaver* (Ala. App.), 77 So. 238; *Davis v. Florey* (Ala. App.), 77 So. 413; *Stone v. Goldberg & Lewis* (1912), 6 Ala. App. 249, 60 So. 744; *Ger.-Am. Nat. Bank v. Lewis* (1913), 9 Ala. App. 352, 63 So. 741; *Goldberg & Lewis v. Stone* (1914), 65 So. 454; *Ex parte Goldberg & Lewis*, 191 Ala. 356, 67 So. 839, L. R. A. 1915F, 1159; *Davis v. First Nat. Bank of Blakely* (1915), 192 Ala. 8, 68 So. 261; *Sherrill v. Merch. & Mech. Tr. & Sav. Bank* (1916), 70 So. 723; *Jones v. Bell* (1917), 77 So. 998; *Slaughter v. Green*, 87 So. 358.

*Arkansas*.—*Tancred v. First Nat. Bank* (1916), 187 S. W. 160.

*Colorado*.—*Louisville Co. v. International Trust Co.*, 18 Colo. App. 345, 71 Pac. 898.

*Florida*.—*Camp Lumber Co. v. State Sav. Bank* (1910), 59 Fla. 455, 51 So. 543; *Williams v. Peninsula Grocery Co.* (1917), 75 So. 517.

*Illinois*.—*First Nat. Bank of Chadwick v. Mackey* (1910), 157 Ill. App. 408; *Burr v. Beckler* (1914), 106 N. E. 206, 264 Ill. 230; *Trego v. Cunningham Est.* (1915), 108 N. E. 350, 267 Ill. 367.

*Iowa*.—*Irwin v. Deming* (1909), 142 Iowa 299, 120 N. W. 645; *Roy v. Duff* (1915), 152 N. W. 606; *Young v. Hayes* (1917), 165 N. W. 391.

*Kansas*.—*State Savings Bank v. Krug*, 193 Pac. 899.

*Kentucky*.—*Foster's Admr. v. Metcalf* (1911), 138 S. W. 314.

*Massachusetts*.—*Johnson-Kettell Co. v. Longley Luncheon Co.* (1910), 207 Mass. 52; *Liberty Trust Co. v. Tilton*, 217 Mass. 462, 105 N. E. 605, L. R. A. 1915B, 144.

*Missouri*.—*Sublette v. Brewington* (1909), 139 Mo. App. 410, 122 S. W. 1150; *Scotland Co. Nat. Bank v. Hohn* (1910), 146 Mo. App. 699, 125 S. W. 539; *Cantrell v. Davidson* (1914), 168 S. W. 271; *Long v. Shafer*, 185 Mo. App. 646, 171 S. W. 690; *Chandler v. Hedrick* (1915), 173 S. W. 93; *Miners & Merch. Bank v. St. Louis Smelting & Refining Co.* (Mo. App.) (1915), 178 S. W. 211; *Am. Union Tr. Co. v. Never Break Range Co.* (1917), 190 S. W. 1045; *Davis v. McColl* (1916), 184 S. W. 920; *Carter v. Butler*, 264 Mo. 306, 174 S. W. 399, Ann. Cas. 1917 A, 483; *American Forest Co. v. Hall* (Mo.), 216 S. W. 740.

*Montana*.—*Case Medicine Co. v. Simpson* (1918), 170 Pac. 12; *Merchants National Bank of Billings v. Smith*, 196 Pac. 523; *J. I. Case Threshing Mach. Co. v. Simpson*, 54 Mont. 316.



*Nebraska.*—*Benton v. Silkyta*, 84 Neb. 808, 122 N. W. 61, 24 L. R. A. (N. S.) 1057n; *Nat. Bank of Commerce v. Farmers & Merchants Bank* (1910), 87 Neb. 241, 843, 128 N. W. 522; *Aurora State Bank v. Hayes-Fames Elevator Co.* (1911), 88 Neb. 187, 129 N. W. 279; *Bank of Shendoah v. Kelgord*, 91 Neb. 178, 135 N. W. 548.

*New Mexico.*—*Hill v. Hart* (1917), 167 Pac. 710.

*New York.*—*Schlesinger v. Kurzvok* (1905), 94 N. Y. Supp. 442, 47 Misc. 634; *Rogers v. Morton* (1905), 46 Misc. Rep. 494, 95 N. Y. Supp. 49; *Seaboard Nat. Bank v. Bank of America* (1908), 193 N. Y. 26, 85 N. E. 829; *Manufacturer's Commercial Co. v. Blitz* (1909), 131 A. D. 17, 115 N. Y. Supp. 402; *Smith v. Dixon* (1912), 150 A. D. 571; *Barkley v. Muller* (1914), 149 N. Y. Supp. 620, 164 A. D. 351; *Sabine v. Paine* (1915), 151 N. Y. Supp. 735; *Wolfen v. Security Bank of N. Y.* (1915), 170 A. D. 519, 156 N. Y. Supp. 474; *Dalrymple v. Schwartz* (1917), 164 N. Y. Supp. 496.

*North Carolina.*—*Steinhilper v. Basinght* (1910), 153 N. Car. 293, 69 S. E. 222; *Meyers v. Petty* (1910), 153 N. Car. 462; *Woods v. Finley* (1910), 153 N. Car. 497, 69 S. E. 502; *Elgin City Banking Co. v. McEacheon* (1913), 79 S. E. 680; *Critcher v. Ballard*, 104 S. E. 134.

*North Dakota.*—*Nat. Bank of Commerce v. Pick* (1904), 13 N. Dak. 74, 99 N. W. 63; *Viets v. Silver* (1905), 15 N. Dak. 51, 106 N. W. 35; *Emerson-Brantingham Co. v. Brennan*, 35 N. D. 94, 159 N. W. 700.

*Ohio.*—*Thompson v. Citizens Nat. Bank of Adams*, N. Y. (1909), 32 O. C. C. 131.

*Oklahoma.*—*Stevens v. Pierce*, 193 Pac. 417.

*Oregon.*—*Gardner v. Wiley*, 46 Ore. 96, 79 Pac. 341; *Seaman v. Muir*, 72 Ore. 583, 144 Pac. 121.

*Pennsylvania.*—*Flanders v. Snare* (1908), 37 Pa. Super Ct. 28; *Dominion Trust Co. v. Hildner* (1914), 243 Pa. 253, 90 Atl. 69; *Lincoln Nat. Bank of Pittsburg v. Miller* (1917), 100 Atl. 269, 255 Pac. 467; *Johnston v. Knipe* (1918), 103 Atl. 957.

*South Dakota.*—*Piper v. Hagen* (1914), 146 N. W. 692.

*Washington.*—*Swenson v. Stoltz*, 36 Wash. 318, 78 Pac. 999.

*Wyoming.*—*Capitol Hill St. Bank v. Rawlins Nat. Bank* (1916), 24 Wyo. 423, 160 Pac. 1171.

*United States.*—*McKee v. District Nat. Bank* (1912), 38 A. C. (D. C.) 465.

§ 31. **Indorsement; how made.** The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.<sup>1, 1a</sup>

See text, § 97.

Cross sections: 18, 49, 42.

The Illinois Act adds a clause as follows: "and the addition of words of assignment or guaranty shall not negative the additional effect of the signature as an indorsement, unless otherwise expressly stated."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

A written indorsement on mortgage to which note is pinned is an assignment, not indorsement of note. *Clark v. Thompson*, 194 Ala. 504, 69 So. 925.

Assigning and guaranteeing payment is indorsement. *Jones County Trust & Savings Bank v. Kurt*, — Iowa —, 182 N. W. 409.

Words "hereby assign" on back of negotiable instrument do not affect the indorsement. *Farnsworth v. Burdick*, 94 Kan. 749, 147 Pac. 863.

Authority to indorse for another by rubber stamp. *State Savings Bank of Leavenworth v. Krug*, — Kan. —, 193 Pac. 899.

Contract by officers of company as to note indorsed by one of them is not an indorsement of note. *First Nat. Bank of Doherty*, 156 Ky. 386, 161 S. W. 211.

Evidence of indorsement must be given. *Whitman v. Fournier* (Mass.), 117 N. E. 3.

Rubber stamp indorsement by corporation is good if shown to be ratified. *American Union Trust Co. v. Never Break Range Co.* (Mo. App.), 190 S. W. 1045.

General indorsement passes all title. *American Forest Co. v. Hall*, — Mo. —, 216 S. W. 740.

Proof of indorsement, what sufficient. *Congress Tucking Co. v. Alton Dress & Waist Co.*, 154 N. Y. Supp. 156.

Sufficiency of evidence to prove indorsement. *Donahue v. Bank of America*, 161 N. Y. Supp. 232.

Rubber stamp indorsement sufficient where shown to be intention of indorser. *Mayers v. McRimmon*, 140 N. C. 640, 53 S. E. 447, 111 Am. St. Rep. 879.

Words guaranteeing payment on back of negotiable instrument are not words of indorsement. *Ireland v. Floyd*, 42 Okla. 609, 142 Pac. 401, L. R. A. 1915C, 661.

Indorsement by rubber stamp sufficient. *Flanders v. Snare*, 37 Pa. Sup. Ct. 28.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Clark v. Thompson* (1915), 194 Ala. 504, 69 So. 925.

*Colorado*.—*Marks v. Munson* (1915), 59 Colo. 440, Ann. Cas. 1917A, 766, 149 Pac. 440.

*District of Columbia*.—*McKee v. District Nat. Bank*, 38 App. Cas. 465.

*Iowa*.—*Jones County Trust, etc., v. Kurt*, 182 N. W. 409.

*Kansas*.—*Offenstein v. Weygandt* (1913), 89 Kans. 739, 132 Pac. 991; *Farnsworth v. Burdick* (1915), 94 Kan. 749, 147 Pac. 863; *State, etc., Bank v. Krug*, 193 Pac. 899.

*Kentucky*.—*First Nat. Bank v. Doherty*, 156 Ky. 386, 161 S. W. 211.

*Massachusetts*.—Whitman v. Fournier (Mass.), 117 N. E. 3; Mayberry v. Sprague (1908), 199 Mass. 301.

*Missouri*.—Am. Union Tr. Co. v. Never Break Range Co. (Mo. App.), (1916), 190 S. W. 1045; American Forest Co. v. Hall (Mo.), 216 S. W. 740.

*New York*.—Manufacturer's Commercial Co. v. Blitz (1909), 131 A. D. 17, 115 N. Y. Supp. 402; People v. Fowler (1914), 152 N. Y. Supp. 672; Congress Tucking Co. v. Alton Dress & Waist Co., 154 N. Y. Supp. 156; Donahue v. Bank of America, 161 N. Y. Supp. 232.

*North Carolina*.—Commercial Security Co. v. Main St. Pharmacy (1917), 91 S. E. 298, 94 S. E. 208; Tyson v. Joyner, 139 N. C. 69, 51 S. E. 803; Mayers v. McRimmon, 140 N. C. 640, 53 S. E. 447, 111 Am. St. Rep. 879.

*Ohio*.—Thompson v. Citizens Nat. Bank of Adams, N. Y. (1909), 32 O. C. C. 131.

*Oklahoma*.—Ireland v. Floyd, 42 Okla. 609, 142 Pac. 401, L. R. A. 1915 C. 661; Howard v. Kincaid (1916), 156 Pac. 628; Mangold & Glandt Bank v. Utterback (1916), 160 Pac. 713; Met. Discount Co. v. Davis (1918), 170 Pac. 707.

*Oregon*.—First Nat. Bank of Pomeroy v. McCullough (1908), 50 Oreg. 508, 93 Pac. 366, 17 L. R. A. (N. S.) 1105, 126 Am. St. Rep. 758.

*Pennsylvania*.—Flanders v. Snare (1908), 37 Pa. Super. Ct. 28.

*Virginia*.—Colona v. Parksley Nat. Bank (1917), 92 S. E. 979.

*Washington*.—Swenson v. Stoltz, 36 Wash. 318, 78 Pac. 999.

*Wisconsin*.—Thorpe v. Mindeman, 123 Wis. 149, 101 N. W. 417, 68 L. R. A. 146, 107 Am. St. Rep. 1003.

*United States*.—Wolf v. Am. Tr. & Sav. Bank (1914), 214 Fed. 761 (C. C. A., 7th Ct.)

§ 32. Indorsement must be of entire instrument. The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable or which purports to transfer the instrument to two or more indorsee severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue. <sup>1</sup> 1a

See text, § 100.

Corresponding provision of English Bills of Exchange Act: 32 (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Part interest assignments do not amount to negotiation. *Offenstein v. Weygandt*, 89 Kan. 739, 132 Pac. 991.

Assignment of half interest is not an indorsing. *Berkley v. Muller*, 164 App. Div. 351, 149 N. Y. Supp. 620.

A bona fide indorsee is entitled to recover although he holds part as trustee for another. *Fleshman v. Bibb*, 118 Va. 582, 88 S. E. 64.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Kansas*.—*Offenstein v. Weygandt* (1913), 89 Kans. 739, 132 Pac. 991.

*New York*.—*Barkley v. Muller* (1914), 149 N. Y. Supp. 620, 164 A. D. 351.

*Tennessee*.—*Ahrens & Ott Co. v. Moore & Sons* (1915), 174 S. W. 270.

*Virginia*.—*Fleshman v. Bibb*, 118 Va. 582, 88 S. E. 64.

**§ 33. Kinds of indorsement.** An indorsement may be either special or in blank; and it may also be either restrictive or qualified or conditional.

See text, § 101.

Arkansas has the word "instrument" instead of "indorsement" in the first line, which is a clerical mistake.

Corresponding provision of English Bills of Exchange Act: Sec. 32 (6), 34.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Pleading sufficient if alleges indorsement to plaintiff. *Cleveland Co. v. Chittenden*, 81 Conn. 667, 71 Atl. 935.

Any holder may not sue. *Nokomis Nat. Bank v. Hendricks*, 205 Ill. App. 54.

When assignment and guaranty of payment becomes indorsement. *Jones County Trust & Savings Bank v. Kurt*, — Ia. —, 182 N. W. 409.

Indorsement which passes all title is not restricted or conditional. *American Forest Co. v. Hall*, — Mo. —, 216 S. W. 740.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Connecticut*.—*Cleveland Co. v. Chittenden*, 81 Conn. 667, 71 Atl. 935.

*Illinois*.—*Nokomis Nat. Bank v. Hendricks*, 205 Ill. App. 54.

*Iowa*.—*Jones County, etc., Bank v. Kurt*, 182 N. W. 409.

*Kentucky*.—*Goolrick v. Wallace* (1913), 157 S. W. 920.

*Missouri*.—*Miller v. People's Sav. Bank* (1916), 186 S. W. 547; *American Forest Co. v. Hall* (Mo.), 216 S. W. 740.

*New York*.—*Standard Steam Spec. Co. v. Corn Exch. Bank* (1917), 116 N. E. 386, 220 N. Y. 478.

§ 34. **Special indorsement; indorsement in blank.** A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.<sup>1</sup> <sup>1a</sup>

See text, § 112, 102.

Cross sections: 8, 40, 9.

In the Massachusetts act the words "does not specify any indorsee" are used in place of the words "specifies no indorsee."

In the Wyoming act the word "made" is placed between the words "be" and "payable."

Corresponding provision of English Bills of Exchange Act: 34 (1), (2), (3), 31 (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Blank indorsement not varied by parol evidence. *Torbert v. Montague*, 38 Colo. 325, 87 Pac. 1145.

Proof of indorsement in blank is not a variance where allegation is that of indorsement. *Howell v. Commercial National Bank*, 40 App. Cas. D. C. 370.

Note indorsed "pay to order of," leaving name blank, is payable to bearer. The legal effect of such indorsement is for court. *State v. Hinton*, 56 Ore. 428, 109 Pac. 24.

Note indorsed in blank is transferable by delivery and the purchaser is not obligated to require indorsement. *First Nat. Bank v. Gerli*, 232 Pa. 465, 81 Atl. 540.

Indorsement in blank is not nullified by guaranty following it. *Elgin City Banking Co. v. Hall*, 119 Tenn. 548, 108 S. W. 1068.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Colorado*.—*Wedge Mines Co. v. Denver Nat. Bank* (1903), 19 Colo. App. 182, 73 Pac. 873; *Torbert v. Montague*, 38 Colo. 325, 87 Pac. 1145.

*District of Columbia*.—*Jerman v. Edwards*, 29 App. D. C. 535; *Howell v. Commercial National Bank*, 40 App. Cas. D. C. 370.

*Missouri*.—*Simpson v. Van Laningham* (1916), 183 S. W. 324; *Miller v. People's Sav. Bank*, 193 Mo. App. 499, 186 S. W. 547; *Priest v. Garnet* (1917), 191 S. W. 1048.

*New Jersey*.—*Mackintosh v. Gibbs* (1909), 79 N. J. L. 40, 74 Atl. 708.

*New York*.—*Seaboard Nat. Bank v. Bank of America* (1908), 193 N. Y. 26, 85 N. E. 829; *Standard Steam Spec. Co. v. Corn Exch. Bank* (1917), 116 N. E. 386, 220 N. Y. 478.

*Oregon*.—*State v. Hinton* (1910), 56 Oreg. 428, 109 Pac. 24.

*Pennsylvania*.—*First Nat. Bank v. Gerli*, 232 Pa. 465, 81 Atl. 540; *Lincoln Nat. Bank of Pittsburg v. Miller* (1917), 100 Atl. 269, 255 Pac. 467.

*Tennessee*.—*Elgin City Bldg. Co. v. Hall* (1907), 119 Tenn. 548, 108 S. W. 1068; *First Nat. Bank of Garner v. Smith* (1916), 183 S. W. 862; *Kanaman v. Gahagan* (1916), 185 S. W. 619.

*Vermont*.—*Hale v. Windsor Sav. Bank* (1917), 98 Atl. 993.

*United States*.—*Jerman v. Edwards* (1907), 29 A. C. (D. C.) 535; *Howell v. Commercial Nat. Bk.* (1913), 40 A. C. (D. C.) 370.

§ 35. **Blank indorsement; how changed to special indorsement.** The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.<sup>1, 1a</sup>

See text, § 112.

Cross section: 48.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Indorsement on mortgage as indorsement of note secured. *Slaughter v. Green*, — Ala. —, 87 So. 358.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Davis v. First Nat. Bank of Blakeley*, 192 Ala. 8, 68 So. 261; *Bank of Tallassee v. Jordan* (1917), 75 So. 930; *Slaughter v. Green*, 87 So. 358.

*California*.—*Santa Marina Co. v. Canadian Bank of Commerce* (1919), 254 Fed. 391; *In re Jarmulowsky* (1918), 249 Fed. 319.

*District of Columbia*.—*Jerman v. Edwards*, 29 App. D. C. 535.

*Oklahoma*.—*Keisel v. Baldock* (1915), 154 Pac. 1194.

*United States*.—*Jerman v. Edwards* (1907), 29 A. C. (D. C.) 535.

§ 36. **When indorsement restrictive.** An indorsement is restrictive, which either:

1. Prohibits the further negotiation of the instrument; or
2. Constitutes the indorsee the agent of the indorser; or
3. Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive. <sup>1, 1a</sup>

See text, § 105.

In Montana the word "future" is used for "further" in subdivision 1. This is doubtless a clerical error.

Corresponding provision of the English Bills of Exchange Act: Sec. 35 (1).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Indorsement pay to order of A for credit of account of B charges purchaser with notice of inquiry of defenses. *Werner Piano Co. v. Henderson & Rees*, 121 Ark. 165, 180 S. W. 495.

Indorsement for collection and remittance is restrictive and creates trusteeship. *Lippitt v. Thames Loan & Trust Co.*, 88 Conn. 185, 90 Atl. 369.

"Pay to any bank or banker" is indorsement for collection, but bank may sue if it sends the money to the remitter. *Citizens Trust Co. v. Ward*, 195 Mo. App. 223, 190 S. W. 364.

"Pay to any bank or banker" is not restrictive indorsement. *National Bank of Commerce v. Bossemeyer* (Neb.), 162 N. W. 503.

Notes transferred for collection and application of funds collected to debt are held in due course as against transferor and payee. *Guaranty Security Co. v. Coad*, — Wash. —, 197 Pac. 326.

Indorsement "for credit account of" payee's creditor is restrictive indorsement. *Gulbranson-Dickinson Co. v. Hopkins*, — Wis. —, 175 N. W. 93.

Indorsement "pay to the order of any bank or banker" is not indorsement for rediscount and sale. *First Nat. Bank v. Weitzel*, 239 Fed. Rep. 497, 152 C. C. A. 375.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Haas v. Commerce Trust Co.* (1915), 69 So. 894; *Bank of Tallassee v. Jordan*, — Ala. —, 75 So. 930.

*Arkansas*.—*Werner Piano Co. v. Henderson & Reese* (1915), 121 Ark. 165, 180 S. W. 495.

*Connecticut*.—*Lippitt v. Thames Loan & Trust Co.* (1914), 88 Conn. 185, 90 Atl. 369.

*Missouri*.—*Citizens Trust Co. v. Ward*, 195 Mo. App. 223 (1916), 190 S. W. 364.

*Nebraska*.—*Antelope Co. Bank v. Wright* (1912), 90 Neb. 621, 134 N. W. 1123; *Nat. Bank of Commerce v. Bossemeyer* (1917), 162 N. W. 503.

*New York*.—*Standard Steam Spec. Co. v. Corn Exch. Bank* (1917) 116 S. E. 386, 220 N. Y. 478.

*North Carolina*.—*Murchison Nat. Bank v. Dunn Oil Mills Co.* (1909), 150 N. Car. 718, 64 S. E. 885.

*North Dakota*.—Smith v. Show (1907), 16 N. Dak. 306, 112 N. W. 1062.

*Ohio*.—Peoples, etc., Bank v. Craig, 63 Ohio St. 374, 59 N. E. 102.

*Washington*.—Guaranty Security Co. v. Coad, 197 Pac. 326.

*Wisconsin*.—Gulbranson-Dickinson Co. v. Hopkins (Wis.), 175 N. W. 93.

*United States*.—First Nat. Bank v. Weitzel, 239 Fed. Rep. 497, 152 C. C. A. 375.

§ 37. Effect of restrictive indorsement; rights of indorsee. A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument; or
  2. To bring any action thereon that the indorser could bring;
- or
3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.<sup>1, 1a</sup>

See text, § 105.

Cross section: 48.

In Illinois the following changes are made: At the end of subdivision 2 the following is added: "Except in case of a restrictive indorsement specified in section 36, sub-section 2, any action against the indorser or any prior party that a special indorsee would be entitled to bring." In subdivision 3 the word "instrument" is substituted for the words "his rights as such indorsee"; and at the end of the section the following is added: "Specified in section 36, sub-section 1, and as against the principal or cestui que trust only the title of the first indorsee under the restrictive indorsements specified in section 36 and sub-sections 2 and 3, respectively."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Terms of indorsement without recourse. Hammond Lumber Co. v. Kearsley, — Cal. App. —, 172 Pac. 404.

Indorsement for collection does not destroy the negotiability of instrument. Fawsett v. Nat. Life Ins. Co., 97 Ill. 11.

Indorsement not restrictive which indicates intention to negotiate. Jones County Trust & Savings Bank v. Kurt, — Ia. —, 182 N. W. 409.

Indorsement for collection gives indorsee privilege of demanding, receiving and suing for money. Freeman's Nat. Bank v. Nat. Tube Works, 151 Mass. 413.

Authority given by indorsement for collection is not affected by death of owner. Moore v. Hall, 48 Mich. 143.



General indorsement and the giving of credit to depositor transfers the title to the instrument. *National Bank of Commerce v. Bossemeyer* (Neb.), 162 N. W. 503.

Holder of negotiable paper held as collateral for payment of debt due may sue in his own name. *Third Nat. Bank v. Exum*, 163 N. C. 199, 79 S. E. 498.

Indorsee for collection takes subject to all defenses against indorser and maker. *Smith v. Bayer*, 46 Ore. 143, 79 Pac. 497, 114 Am. St. Rep. 858.

Check indorsed without restriction, but understood to be deposited for collection, remains the property of indorser. *Morris-Miller Co. v. Von Pressentin*, 63 Wash. 74, 114 Pac. 912.

Indorsement of note for collection indorsee can sue in own name. *Metzger v. Segall*, 83 Wash. 80, 145 Pac. 72.

Checking privilege allowed upon check deposited for collection only is gratuity privilege only. *American Sav. Bank & T. Co. v. Dennis*, 90 Wash. 547, 156 Pac. 559.

Effect of unrestricted indorsement upon check deposited for collection only. *American Sav., etc., Bank v. Dennis*, 90 Wash. 547, 156 Pac. 559.

Words "for credit account of" renders indorsement restricted. *Gulbranson-Dickinson Co. v. Hopkins*, — Wis. —, 175 N. W. 93.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*California*.—*Hammond Lumber Co. v. Kearsley* (Cal. App.), 172 Pac. 404.

*District of Columbia*.—*Jerman v. Edwards*, 29 App. D. C. 535.

*Illinois*.—*Fawsett v. Nat. Life Ins. Co.*, 97 Ill. 11.

*Iowa*.—*Jones County Trust, Co. v. Kurt*, 182 N. W. 409.

*Massachusetts*.—*Haskell v. Avery*, 181 Mass. 106, 63 N. E. 15; *Freeman's Nat. Bank v. Nat. Tube Works*, 151 Mass. 413.

*Michigan*.—*Moore v. Hall*, 48 Mich. 143.

*Nebraska*.—*Antelope Co. Bank v. Wright* (1912), 90 Neb. 621, 134 N. W. 1123; *National Bank of Commerce v. Bossemeyer* (Neb.), 162 N. W. 503.

*New York*.—*Baruch v. Buckley* (1915), 151 N. Y. Supp. 853.

*North Carolina*.—*Abrams v. Caveton*, 74 N. C. 523; *Murchison Nat. Bank v. Dunn Oil Mills Co.* (1909), 150 N. C. 718, 64 S. E. 885; *Third Nat. Bank v. Exums*, 163 N. C. 199, 79 S. E. 498.

*Ohio*.—*Peoples, etc., Bank v. Craig*, 63 Ohio St. 374, 59 N. E. 102.

*Oregon*.—*Smith v. Bayer* (1905), 46 Ore. 143, 79 Pac. 497, 114 Am. St. 858.

*Washington*.—*Morris-Miller Co. v. VonPressentin*, 63 Wash. 74, 114 Pac. 912; *Metzger v. Sigall* (1914), 83 Wash. 80, 145 Pac. 72; *American Sav., &c., Bank v. Dennis*, 90 Wash. 547, 156 Pac. 559.

*Wisconsin*.—*Gulbranson-Dickinson Co. v. Hopkins* (Wis.), 175 N. W. 93.

*United States.*—*McKee v. District Nat. Bank* (1912), 38 A. C. (D. C.) 465; *First Nat. Bank v. Weitzel*, 239 Fed. Rep. 497, 152 C. C. A. 375.

§ 38. **Qualified indorsement.** A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.<sup>1</sup> <sup>1a</sup>

See text, § 106.

Cross section: 65.

The Michigan act states: "Such an instrument," instead of "such an indorsement," a clerical error.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Assignment of note is indorsement. *Farnsworth v. Burdick*, 94 Kan. 749, 147 Pac. 863.

Where words "without recourse" followed signature parol evidence admissible to show to whom intended to apply. *Leahmer v. McCollough*, 99 Kan. 451, 162 Pac. 297.

Oral evidence permissible to show to whom without recourse provision applies. *Goolrick v. Wallace*, 154 Ky. 596, 157 S. W. 920, 49 L. R. A. (N. S.) 789.

Oral evidence is inadmissible to show non-recourse agreement. *Aronson v. Nuremburg*, 218 Mass. 376, 105 N. E. 1056.

When assignee of note can not sue in own name. *Gale v. Mayhew*, 161 Mich. 96, 125 N. W. 781, 29 L. R. A. (N. S.) 648.

Indorsement without recourse or warranty to the order of A is a qualified indorsement. *Schmidt v. Pegg*, 172 Mich. 159, 137 N. W. 524.

Indorsement in blank not controlled by oral proof of without recourse intention. *Lake Harriet State Bank v. Miller* (Minn.), 164 N. W. 989.

Where payee guarantees payment of note he is indorser with enlarged liability. *First Nat. Bank v. Baldwin*, 100 Neb. 25, 158 N. W. 371.

Assignment of right, title and interest is indorsement without recourse. *Evans v. Freeman*, 142 N. C. 61, 54 S. E. 847.

Without recourse indorsement may show indorsee not good faith holder. *Merchants Nat. Bank v. Bransom*, 165 N. C. 344, 81 S. E. 410.

When cause of action arises on an indorsement "By agreement, with recourse after security exhausted." *Smith v. Show*, 16 N. D. 306, 112 N. W. 1062.

Qualified indorsement relieves indorser as to indorsee. *Bederman v. Otisville State Bank*, 5 Ohio App. 178.

Transfer of right, title and interest by payee is ordinary indorsement. *Copeland v. Burke* (Okla.), 158 Pac. 1162, L. R. A. 1917A, 1165.

When owner has title as against all parties. *Murphy v. Estle*, — Okla. —, 182 Pac. 83.

Indorsement without recourse is a qualified indorsement. *Cressler v. Brown*, — Okla. —, 192 Pac. 417.

Without recourse indorsement to order of two or more persons does not render instrument non-negotiable. *Page v. Ford*, 65 Ore. 450, 131 Pac. 1013, 45 L. R. A. (N. S.) 247, Ann. Cas. 1915A, 1048.

"Without recourse" indorsement does not put purchaser upon notice of equities. *Elgin City Banking Co. v. Hall*, 119 Tenn. 548, 108 S. W. 1068.

Indorsement without recourse is not evidence against indorsee's good faith. *Leavitt v. Thurston*, 38 Utah 351, 113 Pac. 77.

Parol evidence not admissible to show transfer without recourse. *Holt Mfg. Co. v. Brotherton*, 91 Wash. 354, 157 Pac. 849.

Sell, transfer and assign held an indorsement. *Thorp v. Mindeman*, 123 Wis. 149, 101 N. W. 417, 68 L. R. A. 146, 107 Am. St. Rep. 1003.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*People's Bank of Mobile v. Moore* (1918), 78 So. 789.

*Arkansas*.—*Morehead v. Harris* (1916), 182 S. W. 521.

*California*.—*Hammond Lumber Co. v. Kearsley* (1918), 172 Pac. 404.

*Indiana*.—*Colvert v. Harrington* (1916), 61 Ind. App. 600, 112 N. E. 249.

*Iowa*.—*Higby v. Bahrenfuss* (1917), 163 N. W. 247.

*Kansas*.—*Leahmer v. McCollough*, 99 Kan. 451, 162 Pac. 297; *Farnsworth v. Burdick*, 94 Kan. 749, 147 Pac. 863; *Nelson v. Southworth*, 93 Kan. 532, 144 Pac. 835.

*Kentucky*.—*Goolrick v. Wallace* (1913), 154 Ky. 596, 157 S. W. 920, L. R. A. (N. S.) 789.

*Louisiana*.—*Puckett v. Fox Grocer Co.* (1910), 127 La. 151, 53 So. 475.

*Massachusetts*.—*Aronson v. Nurenborg* (1914), 218 Mass. 376, 105 N. E. 1056.

*Michigan*.—*Gale v. Mayhew* (1910), 161 Mich. 96, 125 N. W. 781, 29 L. R. A. (N. S.) 648; *Schmidt v. Pegg* (1912), 172 Mich. 159, 137 N. W. 524.

*Minnesota*.—*Slimmer v. St. Bank of Halstad* (1916), 159 N. W. 795; *Lake Harriet State Bank v. Miller*, — Minn. —, 164 N. W. 989.

*Nebraska*.—*First Nat. Bank v. Baldwin*, 100 Neb. 25, 158 N. W. 371.

*North Carolina*.—*Evans v. Freeman* (1906), 142 N. Car. 61, 54 S. E. 847; *Bank of Sampson v. Hatcher* (1909), 151 N. Car. 359, 66 S. E. 308; *Merchants Nat. Bank of Indianapolis v. Branson* (1914), 165 N. Car. 344, 81 S. E. 410.

*North Dakota*.—*Smith v. Show*, 16 N. D. 306, 112 N. W. 1062.

*Ohio*.—*Bederman v. Otisville State Bank*, 5 Ohio App. 178.

*Oklahoma*.—*Copeland v. Burke* (1916), 158 Pac. 1165, L. R. A. 1917A; *Howard v. Kincaid* (1916), 156 Pac. 628; *Murphy v. Estle*, 182 Pac. 83; *Cressler v. Brown*, 192 Pac. 417.

*Iregon*.—Page v. Ford (1913), 65 Ore. 450, 131 Pac. 1013, 45 L. R. A. (N. S.) 247, Ann. Cas. 1915A, 1048.

*Tennessee*.—Elgin City Banking Co. v. Hall (1907), 119 Tenn. 548, 108 S. W. 1068.

*Utah*.—Leavitt v. Thurston (1911), 38 Utah 351, 113 Pac. 77.

*Washington*.—Holt Mfg. Co. v. Brotherton, 91 Wash. 354, 157 Pac. 849.

*West Virginia*.—Dollar Sav. & Tr. Co. v. Crawford (1911), 69 W. Va. 109, 70 S. E. 1089, 33 L. R. A. (N. S.) 587; Marion Nat. Bank v. Harden (1918), 97 S. E. 600.

*Wisconsin*.—Thorpe v. Mindeman (1904), 123 Wis. 149, 101 N. W. 417, 107 Am. St. 1003, 68 L. R. A. 146.

§ 39. Conditional indorsement. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.<sup>1a</sup>

See text, § 104.

Construing corresponding provision of the English Bills of Exchange Act: 33.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—Bank of Tallassee v. Jordan (1917), 75 So. 930.

*Florida*.—Williams v. Peninsula Grocery Co. (1917), 75 So. 517.

*Missouri*.—Gumby v. Hayden (1914), 168 S. W. 899.

*New Mexico*.—First Nat. Bank of Albuquerque v. Stover (1916), 155 Pac. 905.

*New York*.—Pinto v. Pulidora (1917), 162 N. Y. Supp. 736.

*North Dakota*.—Smith v. Bradley (1907), 16 N. Dak. 306, 112 N. W. 1062.

*South Dakota*.—Holbart v. Lauritson (1914), 148 N. W. 19.

*Tennessee*.—Cohn v. Lunn (1916), 182 S. W. 584.

*Utah*.—Farmers & Stotck Growers' Bank v. Palivant Valley Land Co. (1917), 165 Pac. 462.

§ 40. Indorsement of instrument payable to bearer. Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person

indorsing specially is liable as indorser to only such holders as make title through his indorsement.<sup>1a</sup>

See text, § 112.

Cross sections: See 66, 67.

The Illinois act changes this section by substituting for "payable to bearer," in line 1, the words "originally payable to or indorsed specially to bearer."

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Texas*.—Johnson v. Mitchell, 50 Tex. 212.

*United States*.—Mechanics-Am. Nat. Bank v. Coleman (1913), 204 Fed. 24.

§ 41. Indorsement where payable to two or more persons. Where an instrument is payable to the order of two or more payees or indorseees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.<sup>1</sup> <sup>1a</sup>

See text, § 98.

Cross sections: 36.

Missouri states "where such an instrument."

The Wisconsin Act (Sec. 1676-11) inserts before "indorseees," "joint."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Note payable to one payee or another payee can be negotiated by either payee. Union Bank v. Spies, 151 Iowa 178, 130 N. W. 928.

Assignment by joint payee to another payee carries authority to indorse. Kaufman v. State Sav. Bank, 151 Mich. 65, 114 N. W. 863, 18 L. R. A. (N. S.) 630, 123 Am. St. Rep. 259.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Iowa*.—The Union Bank of Bridgewater v. Spies (1911), 151 Iowa 178, 130 N. W. 928.

*Kansas*.—Voris v. Schoonover (1914), 138 Pac. 607.

*Michigan*.—Kaufman v. State Sav. Bank (1908), 151 Mich. 65, 114 N. W. 863, 18 L. R. A. (N. S.) 630, 120 Am. St. Rep. 259; Worden Grocer Co. v. Blanding (1910), 126 N. W. 212.

*Missouri*.—Market & Fulton Nat. Bank v. Ettenson's Estat (1913), 158 S. W. 448.

*New York*.—First Nat. Bank of the City of Brooklyn v. Gridley (1906), 112 A. D. 398, 98 N. Y. Supp. 445; Martz v. State Nat. Bank of N. Tonawanda (1911), 131 N. Y. Supp. 1045, 147 A. D. 250.

*Pennsylvania*.—Neyens v. Port (1911), 46 Pa. Super. Ct. 428.

*Rhode Island*.—Oaksdale Mfg. Co. v. Clarke (1908), 29 R. I. 192, 69 Atl. 681.

**§ 42. Effect of instrument drawn or indorsed to a person as cashier.** Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.<sup>1</sup> <sup>1a</sup>

See text, § 98.

Cross section: 18.

In South Dakota the words "the indorsement of" are omitted before the words "the bank" in the last part of the section.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

President of bank performing duties of bank cashier, a note payable to him as "Pt" is payable to bank. Griffin v. Erskine, 131 Iowa 444, 109 N. W. 13.

Indorsement of certificate of deposit made to cashier of the bank by the cashier is indorsement of bank. Johnson v. Buffalo Bank, 134 Iowa 731, 112 N. W. 165.

Note payable only to cashier is not negotiable, but bank may sue thereon. Eades v. Muhlenberg Co. Sav. Bank, 157 Ky. 416, 163 S. W. 494.

"Corporation" does not include towns and cities so that treasurer may act as indorser. Franklin Savings Bank v. Framingham, 212 Mass. 92, 98 N. E. 925.

Instrument payable to treasurer of town is payable to the town named. Quincy Mut. Fire Ins. Co. v. International Trust Co., 217 Mass. 370, 104 N. E. 845, L. R. A. (N. S.) 1915B, 725.

Oral evidence is not admissible to show an indorsement to A to be one to bank of which he was cashier. First Nat. Bank v. McCullough, 50 Ore. 508, 93 Pac. 366, 17 L. R. A. (N. S.) 1105, 126 Am. St. Rep. 758.

Note unindorsed payable to A, who is cashier of B bank, is not proven to belong to bank because of its possession of same. Swanby v. Northern State Bank, 150 Wis. 572, 137 N. W. 763.

When treasurer of town or city may not bind corporation as indorser. Capital Savings, etc., Bank v. Framingham, 246 Fed. Rep. 553, 158 C. C. A. 523.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Illinois.*—McClenathan v. Davis (1909), 243 Ill. 87, 90 N. E. 265.

*Iowa.*—Griffin v. Erskine (1906), 131 Iowa 444, 109 N. W. 13; Johnson v. Buffalo Bank, 134 Iowa 731, 112 N. W. 165; Watts v. Savings Bank (1917), 165 N. W. 897.

*Kentucky.*—Eades v. Muhlenberg Co. Sav. Bank (1914), 157 Ky. 416, 163 S. W. 494.

*Massachusetts.*—Quincy Mutual Fire Insurance Co. v. International Trust Co., 217 Mass. 370, 104 N. E. 845, L. R. A. (N. S.) 1915B, 725; Franklin Sav. Bank v. Framingham, 212 Mass. 92, 98 N. E. 925.

*Missouri.*—Gage v. Bank of Holcomb (1917), 196 S. W. 1077.

*Oregon.*—First Nat. Bank of Pomeroy v. McCullough (1908), 50 Oreg. 508, 93 Pac. 366, 17 L. R. A. (N. S.) 1105, 126 Am. St. Rep. 758.

*Pennsylvania.*—Neyens v. Port (1911), 46 Pa. Super. Ct. 428.

*Washington.*—Hanson v. Northern Bank & Tr. Co. (1917), 167 Pac. 97.

*Wisconsin.*—Swarly v. Northern State Bank, 150 Wis. 572, 137 N. W. 763.

*United States.*—Capital Savings Bank v. Framingham, 246 Fed. Rep. 553, 158 C. C. A. 523.

**§ 43. Indorsement where name is misspelled, et cetera.** Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.<sup>1a</sup>

See text, § 110.

Construing corresponding provision of English Bills of Exchange Act: 32 (4).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Arkansas.*—Soekland v. Storch (1916), 185 S. W. 262.

**§ 44. Indorsement in representative capacity.** Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability. <sup>1. 1a</sup>

See text, § 110.

Cross sections: 20, 38.

Construing corresponding provision of English Bills of Exchange Act: 31 (5).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Form of indorsement on note to negative personal liability as indorser. *Chelsea Exchange Bank v. First U. P. Church*, 89 Misc. Rep. 616, 152 N. Y. Supp. 201.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*New York*.—*Chelsea Bank v. First Un. Presby. Church* (1915), 80 Misc. Rep. 616, 152 N. Y. Supp. 201.

§ 45. Time of indorsement; presumption. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.<sup>1, 1a</sup>

See text, § 110.

Cross section: 52.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Indorsing after maturity. *Seaboard Nat. Bank v. Belden*, — Cal. App. —, 190 P. 1045.

Undated indorsement presumed made before maturity. *Metropolitan Discount Co. v. Davis*, — Okla. —, 170 Pac. 707.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Bledsoe v. City Nat. Bank of Selma* (1912), 7 Ala. App. 195, 60 So. 942.

*California*.—*Seaboard Nat. Bank v. Belden*, 190 Pac. 1045.

*District of Columbia*.—*Catholic University v. Waggaman*, 32 App. D. C. 307.

*New York*.—*German-Am. Bank v. Cunningham* (1904), 97 App. Div. 244, 89 N. Y. Supp. 836; *Colborn v. Arbecon* (1907), 54 Misc. Rep. 623, 104 N. Y. Supp. 968; *Lanning v. Trust Co. of Am.* (1910), 122 N. Y. Supp. 485.

*Ohio*.—*Wehrman v. Beech* (1906), 28 O. C. C. 128.

*Oklahoma*.—*Cedar Rapids Nat. Bank v. Bashara*, 39 Okla. 482, 35 Pac. 1051; *Met. Dis. Co. v. Davis* (1918), 170 Pac. 707.

*Wyoming*.—*Holdsworth v. Blyth & Fargo* (1915), 146 Pac. 603.



**§ 46. Place of indorsement; presumption.** Except where the contrary appears every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.<sup>1</sup> <sup>1a</sup>

See text, § 110.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Indorsement is presumed *prima facie* to be made at place where instrument dated. Walling v. Cushman, — Mass. —, 130 N. E. 175.

Presumption as to place of indorsement. Finch v. Calkins, 183 Mich. 298, 149 N. W. 1037.

Accommodation indorser estopped as to holder in due course to vary the presumed place of indorsement. Chemical Nat. Bank v. Kellogg, 183 N. Y. 92, 75 N. E. 1103, 2 L. R. A. (N. S.) 299, 111 Am. St. Rep. 717.

When indorsement must be before maturity. Jones v. Brandt, — Wis. —, 181 N. W. 813.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Massachusetts.*—Walling v. Cushman, 130 N. E. 175.

*Michigan.*—Finch v. Calkins, 183 Mich. 298, 149 N. W. 1037.

*New York.*—Chemical Nat. Bank v. Kellogg (1905), 183 N. Y. 92, 75 N. E. 1103, 2 L. R. A. (N. S.) 299, 111 Am. St. Rep. 717.

*Wisconsin.*—Jones v. Brandt, 181 N. W. 813.

**§ 47. Continuation of negotiable character.** An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. <sup>1</sup> <sup>1a</sup>

See text, §§ 13, 110.

Cross sections: 36, 37, 119, *et seq.*

Corresponding provision of English Bills of Exchange Act: 36 (1), (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Plea of non-indorsement for value before maturity is insufficient where no equity shown against maker. Barnes v. Carr, 65 Fla. 87, 61 So. 184.

Transfer for value without indorsement. Sanderson v. Clark, — Ida. —, 194 Pac. 472.

Indorsee after maturity are not relieved from defenses of maker and prior indorsers. Ohio Valley, etc., Co. v. Great Southern Fire Ins. Co. (Ky.), 197 S. W. 399.

Effect of transfer without indorsement signature. Critcher v. Ballard, — N. C. —, 104 S. E. 134,

Note continues negotiable until restrictively indorsed. *Union Nat. Bank of Massillon, Ohio, v. Mayfield*, — Okla. —, 179 Pac. 1034.

Negotiable instrument continues as such until restricted by indorsement or payment although overdue. *Oakdale Mfg. Co. v. Clarke*, 29 R. I. 192, 69 Atl. 681.

Restrictive indorsement gives indorsee instrument restricted as to person or use. *Gulbranson-Dickinson Co. v. Hopkins*, — Wis. —, 175 N. W. 93.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Connecticut*.—*Cent. Nat. Bank v. Stoddard* (1910), 83 Conn. 330, 76 Atl. 472; *Lippitt v. Thomas Loan & Trust Co.* (1914), 90 Atl. 369.

*Florida*.—*Barnes v. Carr*, 65 Fla. 87, 61 So. 184.

*Idaho*.—*Sanderson v. Clark*, 194 Pac. 472.

*Kentucky*.—*Ohio Valley, etc., Co. v. Great Southern Fire Ins. Co.* (Ky.), 197 S. W. 399.

*Missouri*.—*Lane v. Hyder* (1912), 163 Mo. App. 688, 147 S. W. 514.

*New Jersey*.—*Gibbs v. Allen* (1915), 94 Atl. 61.

*New York*.—*McBee Co. v. Shoemaker* (1916), 160 N. Y. Supp. 251; *Crusins v. Siegman* (1913), 142 N. Y. Supp. 348; *McMill v. Shellito* (1919), 173 N. Y. Supp. 810.

*North Carolina*.—*Critcher v. Ballard*, 104 S. E. 134.

*Oklahoma*.—*Union Nat. Bank of Massillon, Ohio, v. Mayfield* (1918), 174 Pac. 1034.

*Rhode Island*.—*Oaksdale Mfg. Co. v. Clarke* (1908), 29 R. I. 192, 69 Atl. 681.

*Wisconsin*.—*Gulbranson-Dickinson Co. v. Hopkins* (Wis.), 175 N. W. 93.

*United States*.—*Church v. Sweetland* (1917), 243 Fed. 289; *Emerson v. Fisher* (1917), 246 Fed. 642.

§ 48. **Striking out indorsement.** The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.<sup>1, 1a</sup>

See text, § 110.

In the Kentucky Act "owner" is used for "holder" in the first line, which is doubtless a clerical error.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

§ 46. Place of indorsement; presumption. Except where the contrary appears every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.<sup>1, 1a</sup>

See text, § 110.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Indorsement is presumed *prima facie* to be made at place where instrument dated. Walling v. Cushman, — Mass. —, 130 N. E. 175.

Presumption as to place of indorsement. Finch v. Calkins, 183 Mich. 298, 149 N. W. 1037.

Accommodation indorser estopped as to holder in due course to vary the presumed place of indorsement. Chemical Nat. Bank v. Kellogg, 183 N. Y. 92, 75 N. E. 1103, 2 L. R. A. (N. S.) 299, 111 Am. St. Rep. 717.

When indorsement must be before maturity. Jones v. Brandt, — Wis. —, 181 N. W. 813.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Massachusetts*.—Walling v. Cushman, 130 N. E. 175.

*Michigan*.—Finch v. Calkins, 183 Mich. 298, 149 N. W. 1037.

*New York*.—Chemical Nat. Bank v. Kellogg (1905), 183 N. Y. 92, 75 N. E. 1103, 2 L. R. A. (N. S.) 299, 111 Am. St. Rep. 717.

*Wisconsin*.—Jones v. Brandt, 181 N. W. 813.

§ 47. Continuation of negotiable character. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. <sup>1, 1a</sup>

See text, §§ 13, 110.

Cross sections: 36, 37, 119, *et seq.*

Corresponding provision of English Bills of Exchange Act: 36 (1), (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Plea of non-indorsement for value before maturity is insufficient where no equity shown against maker. Barnes v. Carr, 65 Fla. 87, 61 So. 184.

Transfer for value without indorsement. Sanderson v. Clark, — Ida. —, 194 Pac. 472.

Indorsees after maturity are not relieved from defenses of maker and prior indorsers. Ohio Valley, etc., Co. v. Great Southern Fire Ins. Co. (Ky.), 197 S. W. 399.

Effect of transfer without indorsement signature. Critcher v. Ballard, — N. C. —, 104 S. E. 134.

Note continues negotiable until restrictively indorsed. *Union Nat. Bank of Massillon, Ohio, v. Mayfield*, — Okla. —, 179 Pac. 1034.

Negotiable instrument continues as such until restricted by indorsement or payment although overdue. *Oakdale Mfg. Co. v. Clarke*, 29 R. I. 192, 69 Atl. 681.

Restrictive indorsement gives indorsee instrument restricted as to person or use. *Gulbranson-Dickinson Co. v. Hopkins*, — Wis. —, 175 N. W. 93.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Connecticut*.—*Cent. Nat. Bank v. Stoddard* (1910), 83 Conn. 330, 76 Atl. 472; *Lippitt v. Thomas Loan & Trust Co.* (1914), 90 Atl. 369.

*Florida*.—*Barnes v. Carr*, 65 Fla. 87, 61 So. 184.

*Idaho*.—*Sanderson v. Clark*, 194 Pac. 472.

*Kentucky*.—*Ohio Valley, etc., Co. v. Great Southern Fire Ins. Co.* (Ky.), 197 S. W. 399.

*Missouri*.—*Lane v. Hyder* (1912), 163 Mo. App. 688, 147 S. W. 514.

*New Jersey*.—*Gibbs v. Allen* (1915), 94 Atl. 61.

*New York*.—*McBee Co. v. Shoemaker* (1916), 160 N. Y. Supp. 251; *Crusins v. Siegman* (1913), 142 N. Y. Supp. 348; *McMill v. Shellito* (1919), 173 N. Y. Supp. 810.

*North Carolina*.—*Critcher v. Ballard*, 104 S. E. 134.

*Oklahoma*.—*Union Nat. Bank of Massillon, Ohio, v. Mayfield* (1918), 174 Pac. 1034.

*Rhode Island*.—*Oakdale Mfg. Co. v. Clarke* (1908), 29 R. I. 192, 69 Atl. 681.

*Wisconsin*.—*Gulbranson-Dickinson Co. v. Hopkins* (Wis.), 175 N. W. 93.

*United States*.—*Church v. Sweetland* (1917), 243 Fed. 289; *Emerson v. Fisher* (1917), 246 Fed. 642.

**§ 48. Striking out indorsement.** The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.<sup>1, 1a</sup>

See text, § 110.

In the Kentucky Act "owner" is used for "holder" in the first line, which is doubtless a clerical error.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Possession of note by indorsee, to whom a note indorsed by him had been returned, can sue without striking out his name as indorser. *New Haven Mfg. Co. v. New Haven Pulp Co.*, 76 Conn. 126, 55 Atl. 604.

Words "to account of A" after indorsement in blank by payee may be stricken out in suit by plaintiff. *Jerman v. Edwards*, 29 App. D. C. 535.

Holder of note indorsed in blank by payee may strike out all subsequent indorsements. *Howell v. Commercial Nat. Bank*, 40 App. D. C. 370.

When indorsement in blank on note is controlled by erasure of assignment to another on mortgage. *King v. Bellamy*, 82 Kan. 301, 108 Pac. 117.

Holder may at any time strike out unnecessary indorsement. *Leavitt v. Wintman*, — Mass. —, 125 N. E. 390.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Connecticut*.—*New Haven Mfg. Co. v. New Haven Pulp Co.* (1903), 76 Conn. 126, 55 Atl. 604.

*District of Columbia*.—*Jerman v. Edwards* (1907), 29 A. C. (D. C.) 535; *Howell v. Commercial Nat. Bank* (1913), 40 A. C. (D. C.) 370.

*Kansas*.—*King v. Bellamy* (1910), 82 Kans. 301, 108 Pac. 117.

*Massachusetts*.—*Leavett v. Wintman* (Mass.), 125 N. E. 390.

*Michigan*.—*Ensign v. Fogg* (1913), 143 N. W. 82.

*Missouri*.—*Elliott v. Qualls* (1910), 130 S. W. 474; *Nance v. Hayward* (1914), 170 S. W. 429; *Carter v. Butler* (1915), 174 S. W. 399.

*New Jersey*.—*Pohlemus v. Prudential Realty Co.* (1907), 74 N. J. L. 570, 67 Atl. 303; *Mackintosh v. Gibbs* (1909), 79 N. J. L. 40, 74 Atl. 708.

§ 49. **Transfer without indorsement; effect of.** Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.<sup>1, 1a</sup>

See text, § 113.

Cross sections: 125, 30, 31, 18, 187, 59.

In Alabama the words "said holder" are used in place of "transferor" in the first paragraph, and the words "for the purpose of transferring title only" are added at the end of said paragraph.

In Colorado the words "if omitted by mistake, accident or fraud" are added at the end of the first sentence.

In Illinois and Missouri the words "to have the indorsement of the transferor" are struck out and the following used in place thereof: "To enforce the instrument against one who signed for the accommoda-

tion of the transferrer, and the right to have the indorsement of the transferrer if omitted by accident or mistake."

In Wisconsin the following is added at the end of the section: "When the indorsement was omitted by mistake, or there was an agreement to indorse made at the time of the transfer, the indorsement when made relates back to the time of transfer."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Transferee bound by payment to payee where he received unindorsed note and gave no notice of transfer. *Vann v. Marbury*, 100 Ala. 438, 14 So. 273, 23 L. R. A. 325, 46 Am. St. Rep. 70.

Transfer without indorsement does not cut off equities before notice of transfer. *Barker v. Barth*, 192 Ill. 460, 61 N. E. 388.

Evidence necessary to make *prima facie* showing of transfer without indorsement to possessor. *Roy v. Duff*, 170 Iowa 319, 152 N. W. 606.

When possessor is *prima facie* owner of unindorsed note. *Callahan v. Louisville Dry Goods Co.*, 140 Ky. 712, 715, 137 S. W. 995.

When payment to payee of unindorsed instrument binds transferee. *Jones v. Witter*, 13 Mass. 304.

Possession of unindorsed note not *prima facie* evidence of ownership. *Van Eman v. Stanchfield*, 10 Minn. 255.

Negotiation of an unindorsed instrument in hands of holder for value takes effect when transferrer indorses same. *Kiefer v. Tolbert*, 128 Minn. 519, 151 N. W. 529.

Possession is not *prima facie* evidence of ownership of unindorsed note payable to order. *Dorn v. Parsons*, 56 Mo. 601.

Plaintiff must prove indorsement where general denial filed; possession proof insufficient. *Nance v. Hayward*, 183 Mo. App. 217, 170 S. W. 429.

Legal title passes without indorsement. *Townsend v. Alewel*, — Mo. App. —, 202 S. W. 447.

Burden of proving indorsement is on the plaintiff under plea of general denial. *Peoples Trust, etc., Bank v. Rook*, 96 Neb. 415, 148 N. W. 95.

When transferee bound by payment to payee. *Dunn v. Meserve*, 58 N. H. 429.

Transferee of note payable to order without indorsement is not holder in due course. *Mayers v. McRimmon*, 140 N. C. 640, 53 S. E. 447, 111 Am. St. Rep. 879.

When transferee without indorsement is not holder in due course of note payable to order. *Steinhilper v. Basnight*, 153 N. C. 293, 69 S. E. 220.

Possession of unindorsed note payable to order is not *prima facie* evidence of ownership. *Shepard v. Hanson*, 9 N. D. 249, 83 N. W. 20.

Transferee may be vested with equitable or legal title without being holder in due course. *Simpson v. First Nat. Bank of Roseburg*, — Ore. —, 185 Pac. 913.

Mere fact of possession is not evidence of ownership of unindorsed note payable to order. *Escamilla v. Pingree*, 44 Utah 421, 141 Pac. 103, L. R. A. 1915B, 475.

Payment to payee is effective where made before notice of transfer without indorsement. *Campbell v. Day*, 16 Vt. 558.

Title vests in transferee without indorsement. *Swenson v. Soltz*, 36 Wash. 318, 78 Pac. 999.

Maker estopped to set up equities where note transferred for value although payee did not indorse it. *Marling v. Fitzgerald*, 138 Wis. 93, 120 N. W. 388.

Note payable to order unindorsed is not *prima facie* property of holder. Capitol Hill State Bank v. Rawlins Nat. Bank, 24 Wyo. 423, 160 Pac. 1171.

Transferee of unindorsed instrument entitled to have indorsement made and sue thereon. Walters v. Neary, 21 T. L. R. 146.

When transferor for value without indorsement need not have indorsement made. Hood v. Stewart, 17 Session Cases (4th Series) 749.

Possessor of unindorsed instrument entitled to have same indorsed where he purchased for value before maturity. Day v. Longhurst, Weekly Notes (1893) 3.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—German-American Nat. Bank v. Lewis, 9 Ala. App. 352, 63 So. 741; Vann v. Marbury, 100 Ala. 438, 14 So. 273, 23 L. R. A. 325, 46 Am. St. Rep. 70.

*Arkansas*.—Williamson Bank & Tr. Co. v. Miles (1914), 169 S. W. 368.

*California*.—Shoenhair v. Jones (1917), 165 Pac. 971.

*Colorado*.—Bank of Bromfield v. McKinley, 53 Colo. 279, 125 Pac. 493; Lane v. Lane (1914), 57 Colo. 419, 140 Pac. 804.

*Connecticut*.—Goodsell v. The McElroy Bros. Co. (1912), 86 Conn. 402, 85 Atl. 509.

*Florida*.—Barnes v. Carr (1913), 61 So. 184.

*Illinois*.—Barker v. Barth, 192 Ill. 460, 61 N. E. 388.

*Iowa*.—Roy v. Duff (1915), 170 Iowa 319, 152 N. W. 606.

*Kentucky*.—Callahan v. Louisville Dry Goods Co. (1910), 140 Ky. 712, 715, 131 S. W. 993; Foster's Admr. v. Metcalf (1911), 144 Ky. 385, 138 S. W. 314.

*Minnesota*.—VanEman v. Stanchfield, 10 Minn. 255; Kiefer v. Tolbert (1915), 128 Minn. 519, 151 N. W. 529.

*Missouri*.—Cavitt v. Thorp, 30 Mo. App. 131; Market & Fulton Nat. Bank v. Ettenson's Estate (1913), 158 S. W. 448; Dorn v. Parsons, 56 Mo. 601; Townsend v. Alwel (1918), 202 S. W. 447; Richardson v. Drug Co., 92 Mo. App. 515; Hair v. Edwards, 104 Mo. App. 213, 77 S. W. 1089; Wade v. Boone, 184 Mo. App. 88, 168 S. W. 360; Carter v. Butler, 264 Mo. 306, 174 S. W. 399; Cantrell v. Davidson, 180 Mo. App. 410, 168 S. W. 271; Nance v. Hayward, 183 Mo. App. 217, 170 S. W. 429; First Nat. Bank v. Stam, 186 Mo. App. 439, 171 S. W. 567; Wright v. Wayland (Mo. App.), 188 S. W. 928.

*New Hampshire*.—Dunn v. Meserve, 58 N. H. 429.

*Nebraska*.—Peoples Trust, etc., Bank v. Rook, 96 Neb. 415, 148 N. W. 95.

*New York*.—Manufacturer's Commercial Co. v. Blitz (1909), 131 A. D. 17, 115 N. Y. Supp. 402; Meuer v. Phoenix Nat. Bank (1904), 94 A.

D. 331, 88 N. Y. Supp. 83; *Brown v. James* (1911), 130 N. Y. Supp. 333; *Martz v. State Nat. Bank of N. Tonawanda* (1911), 131 N. Y. Supp. 1045, 147 A. D. 250; *Hathaway v. Co. of Delaware*, 185 N. Y. 368, 78 N. E. 153, 13 L. R. A. (N. S.) 273, 113 Am. St. Rep. 909.

*North Carolina*.—*Mayers v. McRimmon* (1906), 140 N. Car. 640, 53 S. E. 447, 111 Am. St. Rep. 879; *Keel v. Construction Co.* (1906), 143 N. Car. 429, 55 S. E. 826; *Johnson Co. Sav. Bank v. Scoggin Drug Co.* (1910), 67 S. E. 253; *Steinhilper v. Basnight* (1910), 153 N. Car. 293, 69 S. E. 220; *Myers v. Petty*, 153 N. Car. 462, 464, 69 S. E. 417, 418; *Elgin City Banking Co. v. McEachern*, 163 N. C. 333 (1913), 79 S. E. 680.

*North Dakota*.—*Shepard v. Hanson*, 9 N. D. 249, 83 N. W. 20.

*Oregon*.—*First Nat. Bank of Pomeroy v. McCullough* (1908), 50 Oreg. 508, 93 Pac. 366; *Baker v. Moran* (1913), 136 Pac. 30; *Witt v. Campbell-Lakin Soap Co.* (1913), 134 Pac. 316; *Simpson v. First Nat. Bank of Roseburg* (Ore.), 185 Pac. 913.

*Pennsylvania*.—*Nat. Bank of Pittsburg v. Miller* (1917), 100 Atl. 269.

*South Dakota*.—*Piper v. Hagen* (1914), 33 S. D. 491, 146 N. W. 692.

*Tennessee*.—*Landis v. White Bros.* (1913), 127 Tenn. 504, 152 S. W. 1031; *Allen v. Hayes* (1918), 201 S. W. 135.

*Utah*.—*Escamilla v. Pingree* (1914), 44 Utah 421, 141 Pac. 103, L. R. A. 1915B, 475.

*Vermont*.—*Campbell v. Day*, 16 Vt. 558.

*Washington*.—*Swenson v. Stoltz*, 36 Wash. 318, 78 Pac. 999; *O'Connor v. Slatter* (1908), 48 Wash. 493, 93 Pac. 1078; *First Nat. Life Assurance Soc. of Am. v. Farquhar* (1913), 135 Pac. 619; *Puget Sound State Bank v. Washington Paving Co.* (1917), 162 Pac. 870.

*Wisconsin*.—*Lawless v. State* (1902), 114 Wis. 189, 89 N. W. 891; *Marling v. Fitzgerald* (1909), 138 Wis. 93, 120 N. W. 388; *Swanby v. Northern St. Bank* (1912), 150 Wis. 572, 137 N. W. 763.

*Wyoming*.—*Capitol Hill St. Bank v. Rawlings Nat. Bank* (1916), 24 Wyo. 423, 160 Pac. 1171, 50 L. R. A. 581.

*United States*.—*Smith v. Nelson Land & Cattle Co.*, 212 Fed. Rep. 56, 128 C. C. A. 512.

§ 50. When prior party may negotiate instrument. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.<sup>1, 1a</sup>

See text, § 110.

Cross sections: 119, 121.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:



*Alabama*.—German-Am. Nat. Bank v. Lewis (1913), 9 Ala. App. 352; Britnell v. Smith (1914), 66 So. 569; Owings Lumber Co. v. Marlowe (1917), 76 So. 926.

*Illinois*.—Trego v. Cunningham's Est. (1915), 108 N. E. 350, 267 Ill. 367.

*Kansas*.—Security State Bank v. Clark (1916), 160 Pac. 1149.

*Massachusetts*.—Quimby v. Varmum (1906), 190 Mass. 211, 76 N. E. 671.

*Mississippi*.—Adair v. Bank of Hickory Flat (1917), 75 So. 758; Miller v. Chinn (1917), 195 S. W. 552.

*New York*.—Steinberger v. Hittelman (1915), 156 N. Y. Supp. 320.

*Tennessee*.—Nolan Bros. Lumber Co. v. Dudley Lumber Co., 128 Tenn. 11, 156 S. W. 465.

## ARTICLE IV.

### RIGHTS OF HOLDER.

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| <p>§ 51. Right of holder to sue; payment.</p> <p>52. What constitutes a holder in due course.</p> <p>53. When person not deemed holder in due course.</p> <p>54. Notice before full amount paid.</p> | <p>§ 55. When title defective.</p> <p>56. What constitutes notice of defect.</p> <p>57. Rights of holder in due course.</p> <p>58. When subject to original defenses.</p> <p>59. Who deemed holder in due course.</p> |
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Sections 51 to 59 above are the sections used by the commissioners.

See table of corresponding sections of the Law in the various states and territories on page 360.

**§ 51. Right of holder to sue; payment.** The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.<sup>1, 1a</sup>

See text, § 182.

Cross sections: Sec. 37, subd. 2, 88, 119.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Assignment of note by separate writing as affecting holders. *Davis v. Florey*, — Ala. App. —, 77 So. 413.

Holder for collection only may sue. *Craig v. Palo Alto Stock Farm*, 16 Idaho 701, 102 Pac. 393.

Holder for collection may sue although not beneficially a real party. *Utah Implement Co. v. Kenyon*, 30 Idaho 407, 164 Pac. 1176.

When holder for collection may sue. *Harrison v. Percy*, 174 Ky. 485, 192 S. W. 503.

Defense of fraud against assignee of notes after maturity. *Sparr v. Fulton Nat. Bank*, 179 Ky. 755.

Holder may sue in his own name. *McGowan v. People's Bank*, — Ky. —, 213 S. W. 579.

One having no interest may sue. *Fay v. Hunt*, 190 Mass. 378, 77 N. E. 502.

Holder may sue in own name any party liable on note. *Leavitt v. Wintman*, — Mass. —, 125 N. E. 390.

Suit by holder of note payable to bearer. *J. I. Case Threshing Machine Co. v. Simpson*, 54 Mont. 316.

Payee or indorsee in possession may sue and strike out subsequent indorsers. *R. M. Owen & Co. v. Storms & Co.*, 78 N. J. L. 154, 72 Atl. 441.

When holder may sue although not a real party in interest. *Curtis v. Douglas*, 130 N. Y. Supp. 1054.

Indorsee for collection cannot sue. *Third Nat. Bank v. Exum*, 163 N. C. 199, 79 S. E. 498.

Indorsee of note as collateral security may sue. *Farmers' Bank v. Riedlinger*, 27 N. D. 318, 146 N. W. 556.

Holder may sue in his own name, although others beneficially interested. *Chaffee v. Shartel*, 46 Okla. 199, 148 Pac. 686.

Promissory note attached and sold by sheriff may be sued on by holder although no indorsement by sheriff. *Fishburn v. Londershausen*, 50 Ore. 363, 92 Pac. 1060, 14 L. R. A. (N. S.) 1234.

Collateral security note may be sued on by indorsee. *Melton v. Pensacola Bank*, 190 Fed. Rep. 126, 111 C. C. A. 166.

Holder not in due course. *Worden v. Gillett*, 275 Fed. 654

One with no interest may sue. *Harris v. Johnson*, 75 Wash. 291, 134 Pac. 1048.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Darden v. Holloway* (1911), 1 Ala. App. 661, 56 So. 32; *Coats v. Mut. Alliance Co.* (1911), 174 Ala. 565, 56 So. 915; *Jefferson Co. Sav. Bk. v. Interstate Sav. Bk.* (1912), 4 Ala. App. 363, 59 So. 348; *Davis v. Florey*, 77 So. 413.

*Arizona*.—*Leon v. Citizen's Bldg. & Loan Assn.* (1912), 14 Ariz. 294.

*Arkansas*.—*Pinson v. Cobb* (1914), 166 S. W. 943; *Keahtley v. Holland Banking Co.* (1914), 166 S. W. 953; *Little v. Arkansas Nat. Bk.* (1914), 167 S. W. 75.

*Colorado*.—*Ullery v. Brohm* (1905), 20 Colo. App. 389, 79 Pac. 180; *Sykes v. Kruse* (1911), 49 Colo. 560, 113 Pac. 1013; *Bank of Bromfield v. McKinley* (1912), 125 Pac. 493.

*Connecticut*.—*New Haven Mfg. Co. v. New Haven Pulp Co.* (1903), 76 Conn. 126, 55 Atl. 604.

*Idaho*.—*Craig v. Palo Alto Stock Farm* (1901), 16 Ida. 701, 102 Pac. 393; *Home Land Co. v. Osborn* (1910), 19 Ida. 75, 112 Pac. 764; *Utah Implement Vehicle Co. v. Kenyon* (1917), 30 Ida. 407, 164 Pac. 1177.

*Illinois*.—*Stitzel v. Miller* (1910), 157 Ill. App. 390 (No. 2); *Woodward v. Donovan* (1912), 167 Ill. App. 503; *Harney v. Lee* (1912), 175 Ill. App. 250; *W. A. Fowler Paper Co. v. Best Jones Sales Book Co.* (1913), 183 Ill. App. 310.

*Iowa*.—*Vander Ploey v. Van Zunk* (1907), 135 Iowa 350, 112 N. W. 807.

*Kansas*.—*Boline v. Wilson* (1907), 75 Kans. 829, 89 Pac. 678; *King v. Bellamy* (1910), 82 Kans. 310; *Larner v. Shorthill* (1919), 176 Pac. 107.

*Kentucky*.—*Chateau Tr. & Banking Co. v. Smith* (1909), 133 Ky. 418, 118 S. W. 279; *Callaghan v. Louisville Dry Goods Co.* (1910), 14

Ky. 712, 131 S. W. 995; *Harrison v. Percy* (1917), 174 Ky. 485, 192 S. W. 503; *Harrison v. Nicholson-Foley Co.* (1918), 200 S. W. 929; *Sparr v. Fulton Bank* (1918), 201 S. W. 310, 179 Ky. 755; *McGowan v. People's Bank*, 213 S. W. 579.

*Massachusetts.*—*Fay v. Hunt* (1906), 190 Mass. 378, 77 N. E. 502; *Jump v. Leon* (1906), 192 Mass. 511; *Eddy v. Fogg* (1906), 192 Mass. 543; *Lowell v. Bickford* (1909), 201 Mass. 543, 88 N. E. 1; *Whiddon v. Sprague* (1909), 203 Mass. 526; *Perry v. Pye* (1913), 102 N. E. 653; *Harvey v. Squire* (1914), 105 N. E. 355; *Leavitt v. Wintman*, 125 N. E. 390.

*Michigan.*—*Gale v. Mayhew* (1910), 161 Mich. 96, 125 N. W. 781; *Gen. Conf. Assn. & Co. v. Mich. Sanitarium* (1911), 166 Mich. 504; *Reed v. McReady* (1912), 136 N. W. 488; *Schmidt v. Pegg* (1912), 172 Mich. 159, 137 N. W. 524.

*Missouri.*—*Rhodes v. Guhman* (1911), 156 Mo. App. 344; *Milbank-Scampton Milling Co. v. Parkwood* (1911), 133 S. W. 667; *Lipscomb v. Talbott* (1912), 147 S. W. 798.

*Montana.*—*Case Medicine Co. v. Simpson* (1918), 170 Pac. 12; *J. I. Case Threshing Machine Co. v. Simpson*, 54 Mont. 316.

*Nebraska.*—*Antelope Co. Bk. v. Wright* (1912), 90 Neb. 621, 134 N. W. 1123; *Ostenberg v. Havka* (1914), 145 N. W. 713.

*New Jersey.*—*Hill v. Buchanan* (1905), 71 N. J. L. 301; *R. M. Owen & Co. v. Storms & Co.* (1909), 78 N. J. L. 154, 72 Atl. 441.

*New York.*—*Poess v. Twelfth Ward Bk.* (1904), 43 Misc. 45, 86 N. Y. Supp. 857; *Hunter v. Allen* (1905), 106 A. D. 557; *Schlesinger v. Kurzvok* (1905), 94 N. Y. Supp. 442, 47 Misc. 634; *Cleary v. Dykeman* (1914), 146 N. Y. Supp. 611; *Rogers v. Morton* (1905), 46 Misc. 494, 95 N. Y. Supp. 49; *Curtis v. Douglas* (1911), 130 N. Y. Supp. 1054; *Czerney v. Hass* (1911), 144 A. D. 430; *Martz v. State Nat. Bk. of N. Tonowanda* (1911), 131 N. Y. Supp. 1045, 147 A. D. 250; *People's Nat. Bk. of Hackensack v. Rice* (1912), 133 N. Y. Supp. 622; *Schwartz v. Goin* (1912), 149 A. D. 496; *Mazur v. Urback* (1913), 142 N. Y. Supp. 323, 81 Misc. 133; *Dalrymple v. Schwartz* (1917), 164 N. Y. Supp. 496.

*North Carolina.*—*Roller v. McKinney* (1912), 74 S. E. 966; *Park v. Exam.* (1911), 156 N. Car. 228; *Martin & Garrett v. Mask* (1912), 158 N. Car. 436; *Vaughan v. Exam.* (1913), 161 N. Car. 492, 77 S. E. 679; *First Nat. Bk. v. Warsaw Drug Co.* (1914), 81 S. E. 993; *Third Nat. Bk. v. Exum*, 163 N. Car. 199, 79 S. E. 498.

*North Dakota.*—*Am. Soda Fountain Co. v. Hogue* (1908), 17 N. Dak. 375, 116 N. W. 339; *Grover v. Muratt* (1912), 23 N. Dak. 577, 137 N. W. 830; *Farmer's Bank of Mercer Co. v. Riedlinger* (1914), 27 N. Dak. 318, 146 N. W. 556.

*Ohio.*—*Wehrman v. Beech* (1906), 28 O. C. C. 128; *Moore v. Central Nat. Bk. of Cleveland* (1910), 31 O. C. C. 614.

*Oklahoma.*—*Chaffee v. Shartel*, 46 Okla. 199, 148 Pac. 686.

*Oregon*.—Fishburn v. Londershausen (1907), 50 Oreg. 363, 92 Pac. 1060, 14 L. R. A. (N. S.) 1234; Smith v. Bayer (1911), 115 Pac. 148; Gleason v. Denson (1913), 132 Pac. 530; Hewitt v. Andrews (1914), 140 Pac. 438.

*Pennsylvania*.—Johnson Co. Sav. Bk. v. Kock (1908), 38 Pa. Super. Ct. 553; Levy v. Gilligan (1914), 90 Atl. 647.

*Rhode Island*.—Hutchings v. Renhalter (1902), 23 R. I. 518.

*South Dakota*.—Piper v. Hagen (1914), 146 N. W. 692.

*Utah*.—Escamilla v. Pingree (1914), 141 Pac. 103.

*Virginia*.—Fleshman v. Bibb (1916), 88 S. E. 64.

*Washington*.—Capitol Nat. Bk. v. Robinson (1906), 41 Wash. 454, 83 Pac. 1021; Jackson v. Mercantile Fire Ins. Co. (1907), 45 Wash. 244, 88 Pac. 127; Hillman v. Stanley (1909), 56 Wash. 320, 105 Pac. 816; Goodfellow v. First Nat. Bk. (1913), 129 Pac. 90; First Nat. Life Assurance Soc. of Am. v. Farquhar (1913), 135 Pac. 619; Harris v. Johnson (1913), 75 Wash. 291, 134 Pac. 1048; Carr v. Bonthires (1914), 140 Pac. 339.

*West Virginia*.—Farmer's Nat. Bk. v. Howard (1912), 71 W. Va. 57, 76 S. E. 122.

*Wisconsin*.—Swanby v. Northern St. Bk. (1912), 150 Wis. 572, 137 N. W. 763.

*United States*.—Milton v. Pensacola Bk. & Tr. Co. (1911), 190 Fed. 126, 111 C. C. A. 166; Loeb v. Weil (1913), 209 Fed. 608; Pensacola State Bk. v. Melton (1913), 210 Fed. 57; First Nat. Bk. v. Fox (1913), 40 A. C. ( D. C.) 430. Norden v. Gillett, 275 Fed. 654.

§ 52. What constitutes a holder in due course. A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face; or
2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact; or
3. That he took it in good faith and for value; or
4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.<sup>1, 1a</sup>

See text, § 126.

Cross sections: 13, 14, 25, 56.

The Wisconsin act (Secs. 1676-22) adds a fifth subdivision: "That he took it in the usual course of business."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Crediting payee's account does not make bank holder for value. *German-American Nat. Bank v. Lewis*, 9 Ala. App. 352, 63 So. 741.

When issuance of certificate of deposit is a parting with value. *Elmore Co. Bank v. Avant*, 189 Ala. 418, 66 So. 509.

Certificate of deposit not evidence of transferee being holder for value. *Armstrong v. Walker* (Ala.), 76 So. 280.

Indorsement by holder and delivery necessary to transfer. *Jones v. Bell*, — Ala. —, 77 So. 998.

Payment of value required. *Davis v. Simpson*, — Ala. —, 79 So. 48.

Bona fide holder must show his good faith purchase before overdue and without knowledge. *Deshazo v. L. & E. Lamar*, — Ala. —, 85 So. 586.

One acquiring notes regular in form without notice and for value is holder in due course. *Cannon v. Dillehay*, — Ala. App. —, 84 So. 549.

Holder in due course. *Navajo-Apache Bank & Trust Co. v. Wakefield*, — Ariz. —, 180 Pac. 529.

Facts holder in due course must show to recover. *Lentz v. Landers*, — Ariz. —, 185 Pac. 821.

Plea of fraud insufficient as against holder in due course. *White v. Central Nat. Bank*, (Ala.), 78 So. 74.

Evidence of extension or renewal affects holder in due course. *George v. Williams*, 27 Colo. App. 400, 149 Pac. 837.

Purchaser for value after maturity may be holder in due course. *Mersick v. Alderman*, 77 Conn. 634, 60 Atl. 109.

The change of ordinary rule of procedure as to allegation and proof by negotiable instruments law is not unconstitutional. *Johnson County Sav. Bank v. Walker*, 79 Conn. 348, 65 Atl. 132.

Proof that money remained in discount bank at time of notice of equities. *Richards v. Street*, 31 App. Cas. D. C. 427.

Holder in due course may not sue as innocent holder after notice of defense and security given against loss by endorser. *First Nat. Bank v. Fox*, 40 App. Cas. D. C. 430.

Provision in mortgage rendering it overdue by failure to pay interest as affecting holder in due course. *Taylor v. American Nat. Bank*, 63 Fla. 631, 57 So. 678, Ann. Cas. 1914A 309.

Notes procured by fraud are not held by a receiver in due course he being charged with constructive notice. *Brown v. Miller*, 22 Idaho 307, 125 Pac. 981.

Notes indorsed in blank accepted in good faith from an unauthorized transferor are held in due course. *Young Men's Christian Assn., etc., Co. v. Rockford Nat. Bank*, 179 Ill. 599, 54 N. E. 297, 46 L. R. A. 753.

Holder in due course against a subsequent acceptor. *Mt. Vernon Nat. Bank v. Kelling-Karel Co.*, 189 Ill. App. 375.

Plaintiff not entitled to relief where holder of notes indorsed in blank for safe keeping, exceeds his authority and negotiates same. *Justice v. Stonecipher*, 267 Ill. 448, 108 N. E. 722.

Mere fact that corporate stock for which note was given was worthless does not place burden of proof on holder in due course. *Farmers Trust Co. v. Sprowl*, — Ind. App. —, 126 N. E. 81.

Payee not holder in due course although in possession. *Vander Ploeg v. Van Buuk*, 135 Iowa 350.

Prior indebtedness or subsequent withdrawal necessary to make bank holder in due course. *McNight v. Parsons*, 136 Iowa 390, 113 N. W. 858, 22 L. R. A. (N. S.) 718, 15 Ann. Cas. 665, 125 Am. St. Rep. 265.

Obligation to third person may render bank holder in due course. *Montrose Sav. Bank v. Claussen*, 137 Iowa 73, 114 N. W. 547.

Over due interest does not put purchaser upon inquiry where note contains no failure of payment of interest stipulation. *Higby v. Bahrenfuss* (Iowa), 163 N. W. 247.

Purchaser of note payable "on or before four---- after date" is not holder in due course. *In re Philpott's Estate*, 169 Iowa 555, 151 N. W. 825.

Purchaser of unstamped note which is required to be stamped by revenue laws. *Lutton v. Baker*, — Iowa —, 174 N. W. 599.

Question of plaintiff's bona fides in purchase is for the jury. *Doty v. Garfield Township*, 89 Kan. 719, 133 Pac. 172.

Verdict of jury that they did not know whether plaintiff was holder for value before maturity means that he is not. *Iowa City State Bank v. Claypool*, 91 Kan. 248, 137 Pac. 949.

Defenses of set-off or counterclaim as affecting holder for value. *Stevens v. Reegan*, 103 Kan. 79.

Where a bank officer knew that he received no money for bank draft but did not know of another's fraud in procuring the same the bank was not bound by the fraud. *First Nat. Bank v. Lyons Exchange Bank* (Kan.), 164 Pac. 137.

When note payable one day after date not overdue. *Wilkins v. Usher*, 123 Ky. 696, 97 S. W. 37.

Holder must show good faith purchaser. *Commercial Sec. Co. v. Archer*, 179 Ky. 842.

Burden shifts to holder in due course when maker shows vise in inception of note. *Harrison v. Perry*, — Ky. —, 212 S. W. 911.

Holder with knowledge of conditions surrounding making note is not a holder in due course. *Commercial Germania Trust & Savings Bank v. Southwestern Surety Ins. Co.*, — La. —, 82 So. 373.

Purchaser of notes before maturity in good faith for value without notice is entitled to recover. *Dolph v. Stubblefield*, — Md. —, 198 Alt. 488.

Creditor who accepts check in good faith although applied to another's account without creditor's knowledge is holder in due course. *Boston Steel & Iron Co. v. Steuer*, 183 Mass. 140, 66 N. E. 646, 97 Am. St. Rep. 426.

Innocent purchaser for value may recover although accommodation agreement violated. *Mehlinger v. Harriman*, 185 Mass. 245, 70 N. E. 51.

Payee may be holder in due course. *Thorpe v. White*, 188 Mass. 333, 74 N. E. 592.

When notes indorsed in blank are held in due course by one who received them from unauthorized transferee. *Gardiner v. Beacon Trust Co.*, 190 Mass. 27, 76 N. E. 455, 2 L. R. A. (N. S.) 767.

Holder in due course may be the payee of negotiable instrument. *Liberty Trust Co. v. Tilton*, 217 Mass. 462, 105 N. E. 605, L. R. A. 1915B, 144.

Holder in due course can accept note only under authority given agent when the same is known. *Cheney v. Taber*, 221 Mass. 332, 108 N. E. 1072.

Notice of warranty in sales agreement does not affect transferee of note as holder in due course. *Commercial Credit Co. v. M. McDonough Co.*, 130 N. E. 179, — Mass. —.

Plaintiff taking note for value, which on its face negatives dishonor, is holder in due course. *Bovarnick v. Davis*, — Mass. —, 126 N. E. 380.

Provisional credit does not make bank holder in due course. *People's State Bank v. Miller*, 185 Mich. 565, 152 N. W. 257.

Payment of part value for note indorsed without recourse may raise question of good faith. *Jobes v. Wilson*, 140 Mo. App. 281, 124 S. W. 548.

Delivery of check may not be negotiation. *St. Charles Sav. Bank v. Edwards*, 243 Mo. 553, 147 S. W. 978.

Payment of draft and receipt of goods under bill of lading makes purchasing bank holder in due course. *Tapee v. Varley-Wolter Co.*, 184 Mo. App. 470, 171 S. W. 19.

Acceptance of certificate of deposit with words "payment refused" thereon renders one not a holder in due course. *State v. Greenville Bank (Mo. App.)*, 187 S. W. 597.

When a holder of note without notice is not affected by unlawful use of the note by his indorser. *Priest v. Garnett (Mo. App.)*, 191 S. W. 1048.

Changing place of payment so as to show change is notice to indorsee. *Mechanics American Nat. Bank v. Helmbacher*, 199 Mo. App. 173.

Defenses to which note is subject in hands of payee. *Long v. Mason*, 273 Mo. 266.

Knowledge of dispute renders indorsee not holder in due course. *Brophy Grocery Co. v. Wilson*, 45 Mont. 489, 124 Pac. 510.

Knowledge that a warranty was given to the purchaser of goods who executed notes transferred does not render one a holder not in due course. *Baker State Bank v. Grant (Mont.)*, 166 Pac. 27.

Subsequent holder must show himself holder in due course where fraud in inception of note is shown. *Mechanics Savings Bank v. Feeney*, — N. H. —, 108 A. 295.

Check taken upon same day it was drawn, for value without notice is held as holder in due course. *Montgomery Garage Co. v. Manufacturer's Liability Ins. Co.*, — N. J. —, 109 A. 296.

Plaintiff bound by knowledge of unfulfilled condition although purchaser for value. *Groh's Sons v. Schneider*, 34 Misc. Rep. 195, 68 N. Y. Supp. 862.

Amount drawn from bank on credit given in purchase of note controls amount of good faith purchase. *Albany Co. Bank v. Peoples Ice Co.*, 92 App. Div. 47, 86 N. Y. Supp. 773.

Bank may not be holder in due course of paper on which it gives indorser's account credit. *Consolidation Bank v. Kirkland*, 99 App. Div. 121, 91 N. Y. Supp. 353.

Allegation that plaintiff is not holder in due course is pleading a conclusion. *Rogers v. Morton*, 46 Misc. Rep. 494, 95 N. Y. Supp. 49.

Credit without extension of time for payment not valuable consideration for transfer unless payment of part of the debt is made. *National Bank v. Foley*, 54 Misc. Rep. 126, 103 N. Y. Supp. 553.

Holder of note signed by one of dissolved partnership not holder in due course against former partner. *Hunter v. Allen*, 127 App. Div. 572, 111 N. Y. Supp. 820, *sub nomine*, *Hunter v. Bacon*. Affirmed 203 N. Y. 534.

Length of time interest was unpaid is competent to make the question of holder in due course one for the jury. *Citizens' Savings Bank v. Couse*, 68 Misc. Rep. 153, 124 N. Y. Supp. 79.



Holder has right to sue maker, although he has been secured or paid by indorser. *People's Nat. Bank v. Rice*, 149 N. Y. App. Div. 18, 133 N. Y. Supp. 622.

Knowledge of rescission condition affects indorsee's holding. *Laing v. Hudgens*, 62 Misc. Rep. 388, 143 N. Y. Supp. 763.

First debits charged to first credits rule makes bank holder in due course. *Merchants' Nat. Bank v. Santa Maria Sugar Co.*, 162 App. Div. 248, 147 N. Y. Supp. 498, affirmed, 220 N. Y. 732.

Certified check delivered to payee by thief is not held in due course. *Empire Trust Co. v. Manhattan Co.*, 97 Misc. Rep. 694, 162 N. Y. Supp. 629, affirmed, 180 App. Div. 891.

Bank not holder in due course where check is credited to depositor's account. *Citizens' State Bank v. Cowles*, 180 N. Y. 346, 73 N. E. 33, 105 Am. St. Rep. 765.

Note made void by statute as notice to purchaser. *Sabine v. Paine*,

Bank cashing check for customer part in cash and part credited to his account which was drawn out, is holder in due course. *Geneva Nat. Bank v. Fox*, 190 N. Y. Supp. 747.

Burden is on bank to prove purchase of note. *Standing Stone Nat. Bank v. Wilser*, 162 N. C. 53, 77 S. E. 1006.

On question of notice of defects to holder. *Fidelity Trust Co. v. Whitehead*, 165 N. C. 74, 80 S. E. 1065, Ann. Cas. 1915D, 200.

Retention of no rights except to charge transferee on his indorsement makes bank purchaser for value. *Worth Co. v. International Sugar Feed Co.*, 172 N. C. 335, 90 S. E. 295.

Assigns as used in corporation statute does not include holder in due course of negotiable paper. *Nat. Bank of Commerce v. Pick*, 13 N. D. 74, 99 N. W. 63.

When overdue interest does not affect indorsee. *McPherrin v. Tittle*, 36 Okla. 510, 129 Pac. 721, 44 L. R. A. (N. S.) 395.

Part performance on part of purchasing bank may render it holder for value. *Nat. Bank of Commerce v. Armbruster*, 42 Okla. 656, 142 Pac. 393.

Memorandum on note sufficient to charge indorsee with duty to inquire as to status. *Keisel v. Baldock (Okla.)*, 154 Pac. 1194.

Owner before maturity for value and without notice is holder in due course. *Murphy v. Estel*, — Okla. —, 182 Pac. 83.

Purchaser for value before maturity is holder in due course. *Southwest Nat. Bank of Commerce of Kansas City v. Todd*, — Okla. —, 192 Pac. 1096.

Instructions as to whether plaintiff is holder in due course. *Hill v. McCrow*, 88 Ore. 299.

Inference is warranted that plaintiff is not holder in due course. *Commercial Security Co. v. Donald Drug Co.*, — S. C. —, 104 S. E. 312.

Where indorsee of note is shown certificate of incorporation and consent of insurance department to do business in the state he is a holder in due course. *Ochsenreiter v. Block*, — S. D. —, 173 N. W. 736.

One taking notes after two of series were past due as holder in due course. *LeRoy v. Meadows*, — Okla. —, 200 Pac. 858.

Holder in due course must have acquired note by transfer and negotiation from payee and not from maker. *Britton Milling Co. v. Williams*, — S. D. —, 184 N. W. 265.

Procuring credit in another bank may make one holder in due course. *Elgin City Banking Co. v. Hall*, 119 Tenn. 548, 108 S. W. 1068.

When depositor's account is reduced in amount of note purchased he is holder for value. *Griswold v. Davis*, 125 Tenn. 223, 141 S. W. 205.

Pledgee of unmatured note held as security is holder in due course. *Interstate Trust Co. v. Headland*, — Utah, —, 171 Pac. 515.

Trustee may be holder in due course as to original tenor of note although it was altered after indorsement. *Trustees of American Bank v. McComb*, 105 Va. 473, 54 S. E. 14.

Pledgee of completed unmatured note for value without notice of equities is holder in due course. *Anderson v. Union Bank*, 117 Va. 1, 83 S. E. 1080.

Holder, although secured against loss, has right to sue maker. *Capitol Nat. Bank v. Robinson*, 41 Wash. 454, 83 Pac. 1021.

Holder in due course not affected by absence of interest indorsements on note. *Spencer v. Alkali Paint, etc., Co.*, 53 Wash. 77, 101 Pac. 509.

Rule as to equities in favor of maker does not apply to intermediate indorsers or holders. *Reardon v. Cockrell*, 54 Wash. 400, 103 Pac. 457, 50 L. R. A. (N. S.) 87.

Checks marked on contract should be applied to payment of materials when transferred to material man by contractor when considered in mechanic's lien case. *Hughes & Co. v. Flint*, 61 Wash. 460, 112 Pac. 633.

President is charged with knowledge of the infirmity of considerations of company's note. *Hamilton v. Mihills*, 92 Wash. 675, 159 Pac. 887.

Overdue interest and friendship of indorser and indorsee does not put indorsee upon inquiry. *Shultz v. Crewdson* (Wash.), 163 Pac. 734.

Failure of consideration as affecting holder in due course. *Fisk Rubber Co. of N. Y. v. Pinkey*, — Wash. —, 170 Pac. 581.

One taking instrument complete and regular on its face is holder in due course. *United Ry. & Logging Supply Co. v. Siberian Commercial Co.*, — Wash. —, 201 Pac. 21.

Note rendered overdue by failure to pay interest is not taken by subsequent purchaser as in due course. *Hodge v. Wallace*, 129 Wis. 84, 108 N. W. 212, 116 Am. St. Rep. 938.

A prima facie case is made by proof of payment of full value before maturity. *Hodge v. Smith*, 130 Wis. 326, 110 N. W. 192.

Assignment of note is subject to defense of contemporaneous agreement at time of making. *Paulson v. Boyd*, 137 Wis. 241, 118 N. W. 841.

Evidence may negative good faith purchase and not negative title. *Case v. Beyer*, 142 Wis. 496, 125 N. W. 947.

Collection notice not an admission of bank that it was not holder in due course. *Bank of Baraboo v. Laird*, 150 Wis. 243, 136 N. W. 603.

Bank not holder in due course under first credits and debits rule. *Curry v. Wisconsin Nat. Bank*, 149 Wis. 413, 136 N. W. 349.

Cashier's knowledge of conditional delivery is imputed to his bank. *Union Investment Co. v. Epley*, 164 Wis. 438, 160 N. W. 175.

Note showing on its face an alteration of due date is notice to purchaser. *Pensacola State Bank v. Melton*, 210 Fed. Rep. 57.

Holder in due course free from secret equities. *Wolf v. American Trust & Savings Bank*, 214 Fed. 761, 132 C. C. A. 410.

Claimant of equitable interest not a holder in due course. *Pensacola State Bank v. Thornberry*, 226 Fed. 611, 141 C. C. A. 367.

Taker of overdue bill acquires no rights against acceptor. *Redfern v. Rosenthal*, 86 L. R. Rep. 855.

Payee in possession not always holder in due course. *Herdman v. Wheeler* (1902), 1 K. B. 361.

Thief may transfer to payee an instrument payable to order so as to render him holder in due course. *Fletcher Moulton*, L. J. (1907), 1 K. B. 794, 808.

Fraudulently replacing securities stolen from bank by an officer does not render bank holder in due course. *London & County Banking Co. v. London & River Plate Bank*, 21 Q. B. D. 535.

Where bill is indorsed but not signed by drawer until overdue and dishonored it is not complete. *South Wales, etc., Co. v. Underwood* (Q. B. Div. 1899), 15 T. L. Rep. 157.

Maker may be liable to indorsee although he pay indorser and afterwards receives the note from indorser. *Nash v. DeFreville* (1900), 2 Q. B. 72.

Post dated check is valid and negotiable although stamped as check. *Hitchcock v. Edwards*, 60 L. T. Rep. 636.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed :

*Alabama*.—*Merchants Nat. Bk. of Lafayette v. Morris* (1909), 163 Ala. 51, 51 So. 15; *Sneed v. Barclift* (1911), 1 Ala. App. 297, 56 So. 592; *Continental Credit Co. v. Ely* (1917), 100 Atl. 435; *Darden v. Holloway* (1911), 1 Ala. App. 661, 56 So. 32; *Moseley v. Selma Nat. Bk.* (1911), 57 So. 91; *Stone v. Goldberg v. Lewis* (1912), 6 Ala. App. 249, 60 So. 744; *Tatum v. Commercial Bank & Tr. Co.*, 185 Ala. 249, 64 So. 501; *Bruce v. Citizen's Nat. Bk. of Lineville* (1913), 185 Ala. 221, 64 So. 82; *Hartsell v. Roberts* (1913), 64 So. 90; *Clark v. Thompson* (1915), 60 So. 925; *Citizens Nat. Bk. v. Bucheit* (1916), 71 So. 82; *Sherrill v. Merch. & Mech. Trust & Savings Bk.* (1916), 70 So. 723; *Hudson v. Repton State Bk.* (1917), 75 So. 695; *Norris v. Merchants Nat. Bk.* (1911), 2 Ala. App. 434, 57 So. 71; *Bank of Tallahassee v. Jordan* (1917), 75 So. 930; *Armstrong v. Walker* (Ala.), 76 So. 280; *Davis v. Floyd* (1917), 77 So. 413; *White v. Central Nat. Bank*, (Ala.), 78 So. 714; *Birmingham Trust & Sav. Co. v. Howell* (1918), 79 So. 377; *Elmore Co. Bank v. Avant*, 189 Ala. 418, 66 So. 509; *Jones v. Bell*, 77 So. 998; *Davis v. Simpson*, 79 So. 48; *Cannon v. Dillchay*, 84 So. 549; *Deshazoo v. L. & E. Lamar*, 85 So. 586.

*Arizona*.—*Navajo-Apache Bank & Trust Co. v. Wakefield*, 180 Pac. 529; *Lentz v. Landers*, 185 Pac. 821.

*Arkansas*.—*Harrison v. Morgan Curry Co.* (1914), 170 S. W. 578; *Calhoun v. Ainsworth* (1915), 176 S. W. 316; *Conqueror Trust Co. v. Reves Drug Co.* (1915), 176 S. W. 119.

*Colorado*.—*McMann v. Walker* (1903), 31 Colo. 261, 72 Pac. 1055; *Wedge Mines Co. v. Denver Nat. Bk.* (1903), 19 Colo. App. 182, 73 Pac. 873; *First Nat. Bk. of Iowa City v. Smith* (1913), 136 Pac. 460; *George v. Williams* (1915), 149 Pac. 837; *Min. & Mill. Co. v. Stephenson* (1917), 165 Pac. 601; *Burnham Investment Co. v. Sethman* (1918), 171 Pac. 884.

*Connecticut*.—*Mersick v. Alderman* (1905), 77 Conn. 634, 60 Atl. 109; *Johnson Co. Sav. Bk. v. Walker* (1909), 82 Conn. 24; s. c., 79 Conn. 348, 65 Atl. 132 (1906), 80 Conn. 509, 69 Atl. 15; *First Nat. Bk. v. Fairfield Auto Co.* (1917), 99 Atl. 577; *Continental Credit Co. v. Ely* (1917), 100 Atl. 435; *Tice v. Moore* (1909), 82 Conn. 244, 73 Atl. 133.

*Delaware.*—Security Tr. & Safe Dep. Co. v. Duross (1913), 86 Atl. 209.

*Florida.*—Scott v. Taylor (1912), 63 Fla. 612; Taylor v. Am. Nat. Bk., 63 Fla. 631, 57 So. 678, Am. Cas. 1914a 309; Berryhill-Cromatic Co. v. Manitowoc Shipbuilding & Dry Dock Co. (1913), 63 So. 720; Jones v. Manitowoc Shipbuilding & Dry Dock Co. (1913), 62 So. 590; Sumter Co. State Bk. v. Hayes (1915), 67 So. 109; Jones v. The Manitowoc Shipbuilding & Dry Dock Co. (1913), 65 Fla. 457; Bass v. Lee (1917), 74 So. 7.

*Idaho.*—Winter v. Nobs (1910), 19 Ida. 18, 112 Pac. 525; Uuio Stockn Yards Nat. Bk. v. Bolan (1908), 14 Ida. 87, 93 Pac. 508; Sheffield v. Cleland (1911), 19 Ida. 612, 115 Pac. 20; Schellenberger v. Nourse (1911), 20 Ida. 323, 118 Pac. 508; Brown v. Miller (1912), 22 Ida. 307, 125 Pac. 981; Park v. Johnson (1911), 20 Ida. 548, 119 Pac. 52; Park v. Brandt (1911), 20 Ida. 660, 119 Pac. 877; Winter v. Hutchins (1911), 20 Ida. 749, 119 Pac. 883; McCarty v. Lowry (1912), 123 Pac. 943; Altschul v. Rogers (1912), 63 Ida. 512, 126 Pac. 1048; McFarland v. Johnson (1912), 22 Ida. 694, 127 Pac. 908; Nelson v. Hudgel (1913), 23 Ida. 327, 130 Pac. 85; The Southwest Nat. Bk. of Kansas City v. Baker (1913), 23 Ida. 428, 130 Pac. 799; S. W. Nat. Bk. of Kansas City v. Lindley (1916), 158 Pac. 1082.

*Illinois.*—Schintz v. Am. Tr. & Sav. Bk. (1909), 152 Ill. App. 76; Peterson v. Emery (1910), 154 Ill. App. 294; Manussier v. Wright (1910), 158 Ill. App. 214; Perks v. Eshleman (1911), 165 Ill. App. 420; Black v. Downes (1912), 176 Ill. App. 358; Richter v. Burdock (1913), 157 Ill. 410, 100 N. E. 1063; Christina v. Cusseniano (1912), 129 Ill. 873, 57 So. 157; Weir & Craig Mfg. Co. v. Bonus (1913), 177 Ill. App. 626; Justice v. Stonecipere (1915), 108 N. E. 722, 267 Ill. 448.

*Indiana.*—Parker v. Hickman (1916), 111 N. E. 649; Farmer's Trust Co. v. Sprowl, 126 N. E. 81.

*Iowa.*—Waukee Sav. Bk. v. Jones (1916), 150 N. W. 691; Commercial Nat. Bk. v. Citizens State Bk. (1906), 132 Iowa, 706, 109 N. W. 198; McKnight v. Parsons (1907), 136 Iowa, 390, 113 N. W. 858, 125 Am. St. 265; Vander Ploeg v. Van Zuuk (1907), 135 Iowa 350, 112 N. W. 807; Keegan v. Rock (1905), 128 Iowa, 39, 102 N. W. 805; City Nat. Bk. v. Jordan (1908), 139 Iowa, 499, 117 N. W. 578; Montrose Sav. Bk. v. Claussen (1908), 137 Iowa 73, 114 N. W. 547; Voss v. Chamberlain (1908), 139 Iowa, 569, 117 N. W. 269; Arnd v. Aylesworth (1909), 145 Iowa, 185, 123 N. W. 1000; O'Connor v. Kleiman (1909), 143 Iowa 435, 121 N. W. 1088; Iowa Nat. Bk. v. Carter (1909), 144 Iowa, 715, 123 N. W. 237; Case v. Beyer (1910), 125 N. W. 947; Woodbury v. Glick (1911), 151 Iowa 648, 132 N. W. 67; Citizens State Bk. v. Lankin (1912), 134 N. W. 882; Stotts v. Fawfield (1914), 145 N. W. 61; Farmers & Merch. St. Bk. v. Shaffer (1915), 154 N. W. 485; LeClere v. Philpott (1915), 151 N. W. 825; Roy v. Duff (1915), 152 N. W. 606; Higby v. Bahrenfus (1917), 163 N. W. 247; Todd v. Bank of Edgewood (1917), 165 N. W. 593; In re Philpott's Estate, 169 Iowa 555, 151 N. W. 825; Lutton v. Baker, 174 N. W. 599.

*Kansas.*—Nyhart v. Hubach (1907), 76 Kans. 154, 90 Pac. 796; Youle v. Fosha (1907), 76 Kans. 20, 90 Pac. 1090; Gate City Nat. Bk. v. Thrall (1911), 85 Kans. 394; Bk. of Wilber v. Freeburg (1911), 84 Kans. 235; McMillan v. Gardner (1912), 88 Kans. 279; Doty v. Garfield Township

(1913), 89 Kans. 719; Underwood v. Quaintie (1911), 116 Pac. 361; Murchison v. Nies (1912), 87 Kans. 77; Ireland v. Shore (1914), 137 Pac. 926; The Stock Ex. Bk. v. Wykes (1913), 88 Kans. 750; First Nat. Bank v. Lyons Exchange Bk. (Kansas.), 164 Pac. 137; F. & M. Bank v. Beal (1918), 170 Pac. 1007; Stevens v. Reegan, 103 Kans. 79.

*Kentucky*.—Wilkins v. Usher (1906), 123 Ky. 696, 97 S. W. 37; Citizens Bank v. Bank of Weddy (1907), 126 Ky. 169, 103 S. W. 249; Chateau Tr. & Banking Co. v. Smith (1909), 133 Ky. 418, 118 S. W. 279; Bothwell v. Corum (1909), 135 Ky. 767, 123 S. W. 291; Campbell v. Fourth Nat. Bk. of Cincinnati (1910), 137 Ky. 555, 126 S. W. 114; Jett v. Standefer (1911), 143 Ky. 787, 137 S. W. 513; Am. Nat. Bk. v. Madison (1911), 144 Ky. 152, 137 S. W. 1076; Austin v. First Nat. Bk. of Scottsville (1912), 150 Ky. 113; Robertson v. Commercial Security Co. (1913), 151 Ky. 336, 153 S. W. 450; Gahren, Dodge & Malthy v. Parkersburg Nat. Bk. (1914), 162 S. W. 1135; Harrison v. Ford (1914), 165 S. W. 663; Pratt v. Rounds (1914), 169 S. W. 848; Edelen v. Muir (1915), 174 S. W. 474; Gaertner v. Kraft (1915), 176 S. W. 207; Bernard v. Napier (1916), 181 S. W. 624; Harrison v. Union Store Co. (1918), 201 S. W. 31; Commercial Sec. Co. v. Archer, 179 Ky. 842; Harrison v. Perry, 212 S. W. 911.

*Louisiana*.—Wolf v. Zachary & N. E. R. Co. (1911), 128 La. 1092, 55 So. 685; Dicks v. Johnson (1913), 63 So. 700; Gajan v. Patout & Bouguieres (1913), 63 So. 585; McCowen v. Barnett (1915), 68 So. 102; Commercial, Etc., Bank v. Southwestern Surety Insurance Co., 82 So. 373.

*Maryland*.—Arnd v. Heckert (1908), 108 Md. 300, 70 Atl. 417; Burke v. Smith (1909), 111 Md. 624, 75 Atl. 114; Weant v. Southern Tr. & Dep. Co. (1910), 112 Md. 463, 77 Atl. 289; Dolph v. Stubblefield, — Md. —, 108 Atl. 488.

*Massachusetts*.—Boston Steel & Iron Co. v. Steuer (1903), 183 Mass. 140, 66 N. E. 646, 97 Am. St. Rep. 426; Rowe v. Bowman (1903), 183 Mass. 488, 67 N. E. 636; Mehlinger v. Harriman (1904), 185 Mass. 245, 70 N. E. 51; Mass. Nat. Bk. v. Snow (1905), 187 Mass. 159, 72 N. E. 959; White v. Dodge (1905), 187 Mass. 449, 73 N. E. 549; Thorpe v. White (1905), 188 Mass. 333, 74 N. E. 592; Fillebrown v. Hayward (1906), 190 Mass. 472; Buzzell v. Tobin (1909), 201 Mass. 1, 86 N. E. 923; DeReiset v. Longherly (1910), 205 Mass. 8, 91 N. E. 297; Nesson v. Miller (1910), 205 Mass. 515; Johnson Kettel Co. v. Longley Luncheon Co. (1910), 207 Mass. 52; Lewiston Trust & Safe Dep. Co. v. Shackford (1913), 213 Mass. 432; Franklin Sav. Bk. v. International Tr. Co. (1913), 215 Mass. 231, 102 N. E. 363; Liberty Trust Co. v. Tilton, 217 Mass. 462, 105 N. E. 605, L. R. A. 1915b, 144; Quency Mutual Fire Ins. Co. v. International Tr. Co. (1914), 104 N. E. 845; Cheney v. Taber, 221 Mass. 332, 108 N. E. 1072; Nat. Bk. of Newberry v. Wentworth (1915), 105 N. E. 626; Nat. Inv. & Security Co. v. Corey (1916), 222 Mass. 453, 111 N. E. 357; Bank Investment Security Co. v. Carey (1916), 111 N. E. 357; Colonial Fur Ranching Co. v. First Nat. Bk. (1917), 116 N. E. 731; Bovarnick v. Davis, 126 N. E. 380; Commercial Credit Co. v. M. McDonough Co., 130 N. E. 179.

*Michigan*.—Neyens v. Worthington (1908), 150 Mich. 580, 114 N. W. 404, 18 L. R. A. (N. S.) 142; People's Bldg. & Loan Assn. v. Rutz (1909), 158 Mich. 440; Gale v. Mayhew (1910), 161 Mich. 96, 125 N. W. 781; Takes v. Thayer (1911), 131 N. W. 174; White v. Wadhams (1919), 170, N. W. 60.

*Minnesota*.—Finseth v. Scherer (1917), 165 N. W. 124; Gould v. Svendsgaard (1919), 170 N. W. 595.

*Mississippi*.—Moyse Real Est. Co. v. First Nat. Bk. of Commerce (1916), 70 So. 821; First Nat. Bk. v. McGrath & Son Co. (1916), 72 So. 701; Adair v. Bank of Hickory Flat (1917), 75 So. 759.

*Missouri*.—Chitwood v. Hatfield (1909), 136 Mo. App. 688; Sublette v. Brewington (1909), 139 Mo. App. 410, 122 S. W. 1150; Bk. of Houston v. Day (1909), 122 S. W. 756; Jobes v. Wilson (1910), 124 S. W. 548; Bk. of Ozark v. Hanaka (1910), 142 Mo. App. 110, 125 S. W. 221; Johnson Co. Sav. Bk. v. Mills (1910), 143 Mo. App. 265, 127 S. W. 425; Bk. of Ozark v. Tuttle (1910), 144 Mo. App. 294; Coleman v. Stocke (1911), 159 Mo. App. 43, 139 S. W. 216; Nat. Bk. of Commerce in St. Louis v. Morris (1911), 156 Mo. App. 43, 135 S. W. 1008; Link v. Jackson (1911), 158 Mo. App. 63, 139 S. W. 588; Birch Tree State Bk. v. Dowler (1912), 163 Mo. 65, 145 S. W. 843; Federal Discount Co. v. Reid (1912), 162 Mo. App. 238; Schneider v. Johnson (1912), 143 S. W. 78; Hill v. Dillon (1913), 161 S. W. 881; State Bk. of Freeport v. Cape Girardeau & C. R. Co. (1913), 155 S. W. 1111; Greer v. Orchard (1913), 161 S. W. 875; Tapee v. Varley Wolter Co. (1914), 184 Mo. App. 470, 171 S. W. 19; Long v. Shafer (1914), 185 Mo. App. 641, 648; 171 S. W. 690; Bank of Polk v. Wood (1915), 173 S. W. 1093; Farmers & Traders Bank v. Laird (1915), 175 S. W. 116; Fox v. Brosius (1915), 173 S. W. 693; Hadley v. Greenville (1916), 187 S. W. 597; McLean County Bank v. Brown (1916), 186 S. W. 785; Miller v. People's Sav. Bk. (1916), 186 S. W. 547; Priest v. Garnet (1917), 191 S. W. 1048; State v. Greenville Bank (Mo. App.), 187 S. W. 597; Casimer v. Schwartz (1918), 201 S. W. 592; Long v. Mason (1918), 200 S. W. 1062; Bacon v. Reichardt (1919), 208 S. W. 24; Bacon v. Theiss (1919), 208 S. W. 254; Nevins v. Coleman (1918), 200 S. W. 445; Mechanics' American Nat. Bk. v. Helmbacher, 199 Mo. App. 173; Long v. Mason, 273 Mo. 266.

*Montana*.—N. W. Improvement Co. v. Rhoades (1916), 158 Pac. 832; State Bk. of Moore v. Forsythe (1910), 41 Mont. 249; Brophy Grocery Co. v. Wilson (1912), 45 Mont. 489, 124 Pac. 510; Baker State Bk. v. Grant (1917), 166 Pac. 27; Buhler v. Loftus (1917), 165 Pac. 601.

*Nebraska*.—Benton v. Sikyta (1909), 84 Neb. 808, 122 S. W. 60; Bollew v. Wright (1911), 89 Neb. 116, 131 S. W. 185; Central Nat. Bk. v. Ericson (1912), 92 Neb. 396, 138 N. W. 563; Farmers Nat. Bk. of Lyons v. Dixon (1912), 91 Neb. 652, 136 N. W. 845; First Nat. Bk. of Shendoah v. Kelgord (1912), 91 Neb. 178, 135 N. W. 548; Fisher v. O'Hanlon Rowan Appt. (1913), 93 Neb. 529, 141 N. W. 157; Storz Brewing Co. v. Skirving (1913), 142 N. W. 669; Ostenberg v. Kavka (1914), 145 N. W. 713; Douglas v. Burton (1915), 150 N. W. 653; State Bk. of Omaha v. Huffman (1916), 160 N. W. 115; Marshall v. Kirschbaum (1917), 161 N. W. 577; New Hampshire Mechanics Savings Bank v. Feeney, 108 Atl. 295.

*New Jersey*.—Borough of Montvale v. Peoples Bank (1907), 74 N. J. Law 464, 67 Atl. 67; Rice v. Barrington (1906), 75 N. J. L. 806, 70 Atl. 169; Louis De Yonge & Co. v. Woodport Hotel & Land Co. (1909), 72 Atl. 439; Clark v. Barthold (1915), 93 Atl. 699; Linebarger v. Board of Education of West N. Y. (1912), 83 N. J. L. 446; Montgomery Garage Co. v. Manufacturers' Liability Ins. Co., 109 Atl. 296.

*New York.*—*Brewster v. Schrader* (1899), 26 Misc. 480; *Rosenwald v. Goldstein* (1899), 27 Misc. 827; *Citizens Nat. Bk. v. Lillienthal* (1899), 40 A. D. 609; *McCannon v. Shantz* (1900), 149 A. D. 460; *Benedict v. Kress* (1904), 89 N. Y. Supp. 607; *Consolidated Nat. Bk. v. Kirkland* (1904), 99 A. D. 121, 91 N. Y. Supp. 353; *Ketchan v. Govin* (1901), 35 Misc. 375, 71 N. Y. Supp. 991; *M. Groh's Sons Co. v. Schneider* (1901), 34 Misc. 195, 68 N. Y. Supp. 682; *Greaser v. Sugarman* (1902), 76 N. Y. Supp. 922, 37 Misc. 799; *Citizens Bk. of Buffalo v. The Rung Furniture Co.* (1902), 76 A. D. 471; *Perth-Amboy Mut. Loan Assn. v. Chapman* (1903), 80 A. D. 556; *Packard v. Figlinolo* (1909), 114 N. Y. Supp. 753; *Cominsky v. Coleman* (1909), 114 N. Y. Supp. 875; *Weiss v. Rieser* (1909), 62 Misc. 292, 114 N. Y. Supp. 983; *Sutherland v. Mead* (1903), 80 A. D. 103, 80 N. Y. Supp. 504; *Karsch v. Pottier & Styners Mfg. & Importing Co.* (1903), 81 N. Y. 782, A. D. 230; *Mitchell v. Baldwin* (1903), 88 A. D. 265, 84 N. Y. Supp. 1043; *Packard v. Windholz* (1903), 40 Misc. 347, affirmed 88 A. D. 365 (1902); *Simpson v. Hefter* (1904), 42 Misc. 482, 87 N. Y. Supp. 243; *Albany Co. Bk. v. People's Co-op. Ins. Co.* (1904), 92 A. D. 47, 86 N. Y. Supp. 73; *German-American Bank v. Cunningham*, 89 N. Y. Supp. 836, 97 A. D. 244; *Schreyer v. Bailer & Co.* (1904), 97 A. D. 185; *Goetting v. Day* (1904), 87 N. Y. Supp. 510; *Citizens State Bk. v. Cowles* (1905), 180 N. Y. 346, 73 N. E. 33, reversing s. c., 89 A. D. 280; *Chemical Nat. Bank v. Kellogg* (1905), 183 N. Y. 92, 75 N. E. 1103; *The Bk. of Am. v. Waydell* (1905), 103 A. D. 25, 92 N. Y. Supp. 666, citing 25, *Sutherland v. Mead*, 80 A. D. 103 and *Rosman v. Mahoney*, 86 A. D. 377; *Millius v. Kaufman* (1905), 104 A. D. 442, 93 N. Y. Supp. 669; *Hamilton Nat. Bk. v. Upton* (1905), 100 A. D. 105; *Orr v. So. Amoby Terra Cotta Co.* (1905), 94 N. Y. Supp. 524, 47 Misc. 604; *Rogers v. Morton* (1905), 46 Misc. 494, 95 N. Y. Supp. 49; *Hover v. Magley* (1905), 48 Misc. 430, 96 N. Y. Supp. 925; *Hathaway v. County of Delaware* (1906), 185 N. Y. 368, 78 N. E. 153, 13 L. R. A. (N. S.) 273, 113 A. D. 909; *Elias v. Whitney* (1906), 98 N. Y. Supp. 667, 50 Misc. 326; *Schlesinger v. Lehmaier* (1906), 99 N. Y. Supp. 389; *Rosenthal v. Freedman* (1907), 53 Misc. 595, 103 N. Y. Supp. 714; *McGehee v. Cooke* (1907), 55 Misc. 40, 105 N. Y. Supp. 60; *Siegmeister v. Lisenard Realty Co.* (1907), 107 N. Y. Supp. 158; *The Gansevort Bk. of New York v. Gilday* (1907), 110 N. Y. Supp. 271, 53 Misc. 107; *Rice v. Eisler* (1907), 119 A. D. 132; *Arons v. Ziegfeld* (1907), 102 N. Y. Supp. 898, 52 Misc. 571; *Nat. Bk. of Barre v. Foley* (1907), 54 Misc. 126, 103 N. Y. Supp. 553; *Strauss v. St. Louis Co. Bk.* (1908), 126 A. D. 647; *Rosenthal v. Parsonot* (1908), 110 N. Y. Supp. 223; *Valley Dew Distilling Co. v. Ritzmann* (1908), 110 N. Y. Supp. 917; *Hunter v. Allen* (1908), 127 A. D. 572; *Nat. Park Bk. v. Saitta* (1908), 127 A. D. 624, 111 N. Y. Supp. 927; *Schlesinger v. Lehmaier* (1908), 191 N. Y. 69, 83 N. E. 657, 16 L. R. A. (N. S.) 626, 123 Am. St. 591; *Joveshoff v. Rockney* (1908), 109 N. Y. Supp. 818, 58 Misc. 559; *Ward v. City Tr. Co.* (1908), 192 N. Y. 61, 84 N. E. 585; *Am. Seeding Machine Co. v. Slocum* (1908), 58 Misc. 458; *The Royal Bk. of N. Y. v. German-Am. Ins. Co.* (1908), 58 Misc. 563; *Laschinsky v. Margolio* (1908), 129 A. D. 529; *Wallabout Bk. v. Peyton* (1908), 123 A. D. 727, 108 N. Y. Supp. 42; *Squire v. Ordemann* (1909), 194 N. Y. 394; *Heimbach v. Doubleday*, Page Co. (1909), 130 A. D. 34; *Republic Life Ins. Co. v. Hudson Trust Co.* (1909), 130 A. D. 618; *Bacon v. Montauk Brewing Co.* (1909), 130 A. D. 73; *Manufacturer's Commercial Co. v. Blitz* (1909), 131 A. D. 17, 115 N. Y.

Supp. 402; *Horan v. Mason* (1910), 125 N. Y. Supp. 668; *Frank v. Wolff* (1910), 125 N. Y. Supp. 530; *Cluett v. Conture* (1910), 140 A. D. 830, 125 N. Y. Supp. 813; *Ferguson v. Netter* (1910), 141 A. D. 274; *Empire State Surety Co. v. Nelson* (1910), 126 N. Y. Supp. 453; *Citizens Sav. Bk. v. Couse* (1910), 68 Misc. 153; *Hurst v. Lee* (1911), 143 A. D. 614, 127 N. Y. Supp. 1040; *Buckley v. Lincoln Trust Co.* (1911), 131 N. Y. Supp. 105; *Eq. Tr. Co. v. Taylor* (1911), 131 N. Y. Supp. 475, 72 Misc. 52; *Jacobus v. Jamestown Mantel Co.* (1912), 149 A. D. 356, 134 N. Y. Supp. 418; *Borough Bk. of Brooklyn v. Lamphear* (1912), 138 N. Y. Supp. 864; *Bass v. Goldstein* (1913), 83 Misc. 412, 145 N. Y. Supp. 38; *First Bk. of Notasulga v. Jones* (1913), 141 N. Y. Supp. 304; *Kass v. Blumberg* (1913), 142 N. Y. Supp. 544; *Laing v. Hudgens* (1913), 143 N. Y. Supp. 763, 62 Misc. 388; *Lich-und-Spakassa Audorf v. Pfizer* (1913), 158 A. D. 505, 143 N. Y. Supp. 744; *Nat. Discount Co. v. William R. Jenkins Co.* (1913), 143 N. Y. Supp. 996; *Spencer & Co. v. Brown* (1913), 143 N. Y. Supp. 994; *Cleary v. Dykeman* (1914), 146 N. Y. Supp. 611; *Clement v. Saratoga Holding Co.* (1914), 161 A. D. 898, 145 N. Y. Supp. 628; *Coffin v. Tevis* (1914), 149 N. Y. Supp. 986, 164 Misc. 314; *Rambaut v. Tevis* (1914), 149 N. Y. Supp. 993, 164 A. D. 324; *Zivendling v. Kitrosser* (1914), 148 N. Y. Supp. 99; *Brown v. Rowan* (1915), 154 N. Y. Supp. 1098; *Stoller v. Reichgott* (1915), 156 N. Y. Supp. 551; *Bergstrom v. Ritz-Carlton Hotel Co.* (1916), 157 N. Y. Supp. 959; *McBee Co. v. Shoemaker* (1916), 160 N. Y. Supp. 251; *Thornton v. Netherlands-Amer. Steam Nav. Co.* (1917), 165 N. Y. Supp. 682; *Garone v. Russo Ludice Realty Co.* (1917), 164 N. Y. Supp. 135; *Kennedy v. Hyman* (1917), 167 N. Y. Supp. 311; *Gillevan v. Owens* (1918), 169 N. Y. Supp. 958; *Sabine v. Paine*, 223 N. Y. 401; *Geneva Nat. Bank v. Fox*, 190 N. Y. Supp. 747.

**North Carolina.**—*Toms v. Jones* (1900), 127 N. Car. 464; *Manufacturing Co. v. Summers* (1906), 143 N. Car. 102, 55 S. E. 522; *Singer Mfg. Co. v. Summers* (1906), 143 N. Car. 102, 55 S. E. 522; *Am. Nat. Bk. v. Fountain* (1908), 62 S. E. 738, 148 N. Car. 590; *Am. Nat. Bk. v. Fountain* (1908), 148 N. Car. 590, 62 S. E. 738; *Murchison Nat. Bk. v. Dunn Oil Mills Co.* (1909), 150 N. Car. 718, 64 S. E. 885; *Johnston Co. Sav. Bk. v. Chase* (1909), 151 N. Car. 108; *Bk. of Sampson v. Hatcher* (1909), 151 N. Car. 359, 66 S. E. 308; *First Nat. Bk. of Kansas City v. Griffin* (1910), 153 N. Car. 72; *Citizens & Marine Bk. of Newport News v. Southern R. W.* (1910), 153 N. Car. 346; *Myers v. Petty* (1910), 153 N. Car. 462; *Hardy v. Mitchell* (1911), 156 N. Car. 76, 72 S. E. 95, 161 N. Car. 351 (1913), *Park v. Exam* (1911), 72 S. E. 309; *Am. Nat. Bk. of Richmond v. Hill* (1915), 85 S. E. 209; *Gulf States Steel Co. v. Ford* (1917), 91 S. E. 844; *Worth Co. v. International Sugar Feed Co.*, 172 N. Car. 335, 90 S. E. 295.

**North Dakota.**—*Drenkall v. Movius State Bk.* (1901), 118 N. Dak. 10, 88 N. W. 724; *Bank v. Garcean* (1912), 22 N. Dak. 576, 134 N. W. 882; *McCarty v. Keveta* (1913), 139 N. W. 992; *Nat. Bk. of Commerce v. Pick* (1904), 13 N. Dak. 74, 99 N. W. 63; *Walters v. Rock* (1908), 18 N. Dak. 45, 115 N. W. 511; *Farmer's Bk. of Mercer Co. v. Riedlinger* (1914), 146 N. W. 556.

**Ohio.**—*Thompson v. Citizens Nat. Bk. of Adams* (1909), 32 O. C. C. 131; *Spring Valley Nat. Bk. v. Somers* (1910), 21 Ohio Dec. 772; *Hamilton Mach. Tool Co. v. Memphis Nat. Bk.* (1911), 84 Ohio St. 184, 95 N. E. 777.



**Oklahoma.**—*Jenkins v. Planters & Mechanics Bk.* (1912), 126 Pac. 757; *Wood v. Stickle* (1912), 128 Pac. 1082; *First State Bk. of Oklahoma v. Tobin* (1913), 134 Pac. 395; *Cedar Rapids Nat. Bk. v. Bashara* (1913), 35 Pac. 1051; *McPherrin v. Tittle*, 36 Okla. 510, 129 Pac. 721, 44 L. R. A. (N. S.) 395; *Hudson v. Moore* (1913), 130 Pac. 774; *Jones v. Citizen's State Bk.* (1913), 135 Pac. 373; *Western Exchange Bk. of Kansas City v. Coleman* (1913), 132 Pac. 488; *Nat. Bk. of Commerce v. Armbruster* (1914), 142 Pac. 393; *City Nat. Bk. v. Kelly* (1915), 151 Pac. 1172; *Hodgins v. Northwestern Finance Co.* (1915), 148 Pac. 717; *Keisel v. Baldock* (1915), 154 Pac. 1194; *Nicholas Co. v. Thomas* (1915), 151 Pac. 847; *Norman v. Lambert* (1915), 153 Pac. 1097; *Ogle v. Armstrong* (1915), 153 Pac. 1139; *Barry v. Kinseley* (Okla.), 155 Pac. 1168; *Ward v. Oklahoma State Bank* (1915), 151 Pac. 852; *Lambert v. Smith* (1916), 157 Pac. 909; *Conqueror Trust Co. v. Simmon* (1917), 162 Pac. 1098; *Critser v. Steeley* (1917), 162 Pac. 795; *Murphy v. Estel*, 182 Pac. 83; *Southwest Nat. Bk. of Commerce of Kansas City v. Todd*, 192 Pac. 1096; *LeRoy v. Meadows* (Okla.), 200 Pac. 858.

**Oregon.**—*Brown v. Felwert* (1905), 46 Ore. 363, 80 Pac. 414; *White v. Savage* (1906), 45 Ore. 604, 87 Pac. 1040; *First Nat. Bk. of Pomeroy v. McCullough* (1908), 50 Ore. 508, 93 Pac. 366; *Matlock v. Scheuerman* (1908), 51 Ore. 49, 93 Pac. 823, 17 L. R. A. (N. S.) 747; *First Nat. Bk. of Cottage Grove v. Bank of Cottage Grove* (1911), 59 Ore. 388, 117 Pac. 293; *Hull v. Agnus* (1911), 60 Ore. 95, 118 Pac. 284; *Bailey v. Inland Empire Co.* (1915), 146 Pac. 991; *Sink v. Allen* (1916), 154 Pac. 415; *Everding & Farrell v. Taft* (1917), 160 Pac. 1160; *Hill v. McCrow*, 88 Ore. 299.

**Pennsylvania.**—*Homewood People's Bk. v. Heckert* (1903), 207 Pa. 231; *Neil v. Neil* (1904), 25 Pa. Super. Ct. 605; *Garman v. Gumbiner* (1906), 32 Pa. Super. Ct. 181; *Allentown Nat. Bk. v. Clay Product Supply Co.* (1907), 217 Pa. St. 128, 66 Atl. 252; *Lindsay v. Dutton* (1907), 217 Pa. 148, 66 Atl. 250; *Stouffer v. Kelchner* (1908), 38 Pa. Super. Ct. 475; *Johnson Co. Sav. Bk. v. Kock* (1908), 38 Pa. Super. Ct. 553; *Lowry Nat. Bk. v. Hazard* (1909), 223 Pa. 520; *Bowles v. Frazer* (1910), 109 Pa. 812; *Grange Trust Co. v. Brown* (1911), 49 Pa. Sup. 274; *People's Nat. Bk. of Pensacola v. Hazard* (1911), 80 Atl. 554; *Wolfgang v. Shirley* (1913), 86 Atl. 1011.

**Rhode Island.**—*Abram v. Greer* (1913), 88 Atl. 884.

**South Carolina.**—*Commerce Trust Co. v. Grimes* (1914), 82 S. E. 420; *Edens v. Gibson* (1915), 84 S. E. 1005; *Farmer's Bk. v. Crawford* (1916), 88 S. E. 13; *Farmers Mech. Bk. of Florence v. Whitehead* (1916), 89 S. E. 657; *Stevens v. Khetter* (1918), 96 S. E. 406; *Commercial Security Co. v. Donald Drug Co.*, 104 S. E. 312.

**South Dakota.**—*Kahney v. Thayer* (1915), 154 N. W. 1103; *Rumely v. Anderson* (1915), 150 N. W. 939; *Ochsenreiter v. Block*, 173 N. W. 736; *Britton Milling Co. v. Williams*, (S. Dak.), 184 N. W. 265.

**Tennessee.**—*Kimbrough v. Hornsby* (1904), 113 Tenn. 605; *Farmer's Bk. v. Bank of Rutherford*, 115 Tenn. 64, 88 S. W. 939, 112 Am. St. Rep. 817; *Elgin City Bldg. Co. v. Hall* (1907), 119 Tenn. 548, 108 S. W. 1068; *Jefferson Bk. of St. Louis v. Champman-Whittee Lyons Co.* (1909), 122 Tenn. 415, 123 S. W. 641; *Edwards v. Hambly* (1915), 180 S. W. 163; *Griswold v. Davis*, 125 Tenn. 223, 141 S. W. 205;

*Merrimon v. Parkey* (1917), 191 S. W. 327; *Madison Tr. Co. v. Stahlman* (1916), 183 S. W. 1012; *Bromley v. Chattanooga Co* (1917), 198 S. W. 775.

*Texas*.—*Davis v. Converse* (1916), 188 S. W. 697; *McCamant v. Mc. Camant* (1916), 187 S. W. 1096; *Sayles v. First State Bank of Abilene* (1917), 195 S. W. 230; *Zielinski v. Hernig* (1917), 195 S. W. 952.

*Utah*.—*Cole Banking Co. v. Sinclair* (1908), 34 Utah, 454, 98 Pac. 411; *Leavitt v. Thurston* (1911), 38 Utah 351, 113 Pac. 77; *Miller v. Marks* (1915), 148 Pac. 412; *Helper St. Bk. v. Jackson* (1916), 160 Pac. 287; *Interstate Trust Co. v. Headlund* (1918), 171 Pac. 515.

*Virginia*.—*Aragon Coffee Co. v. Rogers* (1906), 105 Va. 51; *Pennington v. Third Nat. Bk. of Columbus, Ga.* (1913), 77 S. E. 455; *Am. Bk. of Orange v. McComb* (1906), 105 Va. 473, 54 S. E. 14; *Fayette Nat. Bk. v. Sunners* (1906), 105 Va. 689, 54 S. E. 862; *City Nat. Bk. of Roanoke v. Hundley* (1911), 70 S. E. 494; *Miller v. Norton & Smith* (1913), 77 S. E. 452; *Williams v. Liphart* (1914), 81 S. E. 77; *Anderson v. Union Bk. of Richmond* (1915), 117 Va. 1, 83 S. E. 1080; *Fleshman v. Bibb* (1916), 88 S. E. 64; *Holdsworth v. Anderson* (1916), 87 S. E. 565; *Ratcliffe v. Costello* (1915), 85 S. E. 469; *Colona v. Parksley Nat. Bk.* (1917), 92 S. E. 979.

*Washington*.—*McNamara v. Jose* (1902), 28 Wash. 461, 68 Pac. 903; *Keene v. Behan* (1905), 40 Wash. 505, 82 Pac. 884; *Gosline v. Dryfoos* (1907), 45 Wash. 396, 88 Pac. 644; *Spencer v. Alkali Paint, Etc., Co.*, 53 Wash. 77, 101 Pac. 509; *Reardan v. Cockrell* (1909), 54 Wash. 400, 103 Pac. 457; *Gray v. Boyle* (1909), 55 Wash. 578, 104 Pac. 828; *Bradley Engineering & Mfg. Co. v. Heyburn* (1910), 56 Wash. 628, 106 Pac. 170; *Cedar Rapids Nat. Bk. v. Myhre* (1910), 57 Wash. 596, 107 Pac. 518; *Bowles v. Frazer* (1910), 109 Pac. 812; *Hughes & Co. v. Flint* (1911), 61 Wash. 460, 112 Pac. 633; *Moyses v. Bell* (1911), 62 Wash. 134, 114 Pac. 193; *Scandinavian Am. Bk. v. Johnston* (1911), 63 Wash. 187, 115 Pac. 102; *Wells v. Duffy* (1912), 69 Wash. 310; *Am. Sav. Bk. & Tr. Co. v. Helgesen* (1911), 64 Wash. 54, 116 Pac. 837; *Barker v. Sartori* (1911), 66 Wash. 260, 119 Pac. 611; *Parker v. Saxton* (1911), 66 Wash. 260; *Canadian Bk. of Commerce v. Sesuon Co.* (1912), 123 Pac. 602; *Davis v. Hibbs* (1913), 73 Wash. 315, 131 Pac. 1135; *Fournier v. Cornish* (1913), 133 Pac. 9; *Union Inv. Co. v. Rosenzweig* (1914), 139 Pac. 874; *Hamilton v. Mihills*, 92 Wash. 675, 159 Pac. 887; *Wash. Trust Co. v. Keyes* (1915), 152 Keyes, 1029; *Schultz v. Crewdson* (1917), 163 Pac. 734; *Hauson v. Roesch* (1919), 176 Pac. 349; *Citizens' Bk. v. Limpricht*, 93 Wash. 361, 160 Pac. 1046; *Fisk Rubber Co. of New York v. Pinkey*, 170 Pac. 581; *United Ry. & Logging Supply Co. v. Siberian Commercial Co.*, (Wash.), 201 Pac. 21.

*Wisconsin*.—*Aebi v. Bk. of Evansville* (1905), 124 Wis. 93, 102 N. W. 329, 68 L. R. A. (N. S.) 964, 109 Am. St. 925; *Hodge v. Wallace*, 129 Wis. 84, 108 N. W. 212, 116 Am. St. Rep. 938; *Hodge v. Smith* (1907), 130 Wis. 326, 110 N. W. 192; *Aukland v. Arnold* (1907), 131 Wis. 64, 111 N. W. 212; *Quiggle v. Herman* (1907), 131 Wis. 379, 111 N. W. 479; *Northfield Nat. Bk. v. Arndt* (1907), 132 Wis. 383, 112 N. W. 451; *Paulson v. Boyd* (1908), 137 Wis. 241, 118 N. W. 841; *Kipp v. Smith* (1908), 137 Wis. 234, 118 N. W. 848; *Bk. of Baraboo v. Laird* (1912), 136 N. W. 603; *Washburn v. Riener* (1912), 149 Wis. 387; *Green v.*

Gunsten (1913), 142 N. W. 261; Badger Machinery Co. v. Columbia County Electric Co. (1917), 163 N. W. 188; Union Investment Co. v. Epley, 164 Wis. 438, 160 N. W. 175.

*Wyoming*.—Iowa State Sav. Bk. v. Henry (1913), 136 Pac. 863; Holdsworth v. Blyth & Fargo (1915), 146 Pac. 603.

*United States*.—In re Hopper-Morgan Co. (1907), 154 Fed. 249; In re Hill (1911), 187 Fed. 214; First Nat. Bk. of Shenandoah v. Linver (1911), 187 Fed. 16, 109 U. S. C. C. A. 70; Nat. Bk. of Commerce in St. Louis v. Sancho Pag. Co. (1911), 110 C. C. A. 112, 186 Fed. 257; Amalgamated Sugar Co. v. U. S. Nat. Bk. of Portland, Oreg. (1911), 109 C. C. A. 494; First Nat. Bk. of Wilkesbarre v. Barnum (1908), 160 Fed. 245; Milton v. Pensacola Bk. & Tr. Co. (1911), 190 Fed. 126, 111 C. C. A. 166; Crosby v. Reynolds (1912), 196 Fed. 640; Pensacola State Bk. v. Melton (1913), 370; O'Toole v. Lanson (1914), 41 App. D. C. 276; Smith v. Nelson Land & Cattle Co. (1914), 212 Fed. 56; Pensacola State Bk. v. Thornberry (1915), 226 Fed. 611 (C. C. A. 6th Ct.); Postal Tel. Cable Co. v. Citizens Nat. Bk. (1916), 228 Fed. 601 (C. C. A., 3d Ct.); Nat. City Bk. of Seattle v. Titlow (1916), 233 Fed. 838; Church v. Sweetland (1917), 24 3Fed. 289, 112 N. W. 918; In re Estate of Philpott, 169 Iowa 555, 151 N. W. 825. wold v. Morrison, — Cal. App. —, 200 Pac. 62.

§ 53. When person not deemed holder in due course. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.<sup>1, 1a</sup>

See text, § 129.

Cross sections: 7.

Corresponding provision of English Bills of Exchange Act: See 36 (3) bill, 86 (3).

South Dakota under another section fixes the maturity of demand instruments.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Note received in due course of business before maturity is held in due course. Lapp v. Merchant's Nat. Bk. of Indianapolis, — Ind. App. —, 123 N. E. 231.

Seven months delay a question for jury as to reasonable time on demand note. In re Estate of Philpott, 169 Iowa, 555, 151 N. W. 825.

Check negotiated two days later not overdue where drawn on Saturday. Asbury v. Taube, 151 Ky. 142, 152 S. W. 372.

Seven months an unreasonable time. American Nat. Bk. v. Patterson, — La. —, 83 So. 218.

Check delivered on Sunday is valid in hands of innocent purchaser. Gordon v. Levine, 197 Mass. 267, 83 N. E. 861, 15 L. R. A. (N. S.) 243, 125 Am. Rep. 361.

Five days not unreasonable time on check. Singer Mfg. Co. v. Summers, 143 N. C. 102, 55 S. E. 522.

One year limit of reasonable time on demand note. *McAdam v. Grand Forks, Etc., Co.*, 24 N. D. 645, 140 N. W. 725, 47 L. R. A. (N. S.) 246.

Negotiation of check next day after issue does not give overdue notice. *Matlock v. Scheuerman*, 51 Ore. 49, 93 Pac. 823, 17 L. R. A. (N. S.) 747.

Sixteen months not unreasonable where monthly payments of interest made. *McLean v. Bryer*, 24 R. I. 599, 54 Atl. 373.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Idaho*.—*Miller v. Del Rio Mining & Milling Co.* (1913), 136 Pac. 448.

*Illinois*.—*Greer v. Downing* (1912), 176 Ill. App. 355.

*Indiana*.—*Lapp v. Merchants Nat. Bank*, 123 N. E. 231.

*Iowa*.—*Anderson v. First Nat. Bk. of Chariton* (1909), 144 Iowa 251, 122 N. W. 918; *LeClere v. Philpott* (1915), 151 N. W. 825; *In re Estate of Philpott*, 169 Iowa 555, 151 N. W. 825.

*Kansas*.—*Doty v. Garfield Township* (1913), 89 Kans. 719.

*Kentucky*.—*Asbury v. Taube*, 151 Ky. 142, 152 S. W. 372.

*Louisiana*.—*American Nat. Bk. v. Patterson*, 83 So. 268.

*Massachusetts*.—*Gardner v. Beacon Trust Co.* (1906), 190 Mass. 27; *Gordon v. Levine* (1908), 197 Mass. 267, 83 N. E. 861, 15 L. R. A. (N. S.) 243, 125 Am. Rep. 361.

*Nebraska*.—*Ostenberg v. Kavka* (1914), 145 N. W. 713.

*New York*.—*Albany Co. Bk. v. People's Co-op. Ice Co.* (1904), 92 A. D. 47, 86 N. Y. Supp. 73; *Royal Bk. of N. Y. v. Reinschreiber* (1911), 126 N. Y. Supp. 749; *Stanley v. Franco-American Ferment Co.* (1916), 161 N. Y. Supp. 365.

*North Carolina*.—*Singer Mfg. Co. v. Summers* (1906), 143 N. Car. 102, 55 S. E. 522; *Johnson v. Lasseter* (1911), 155 N. Car. 47.

*North Dakota*.—*McAdam v. Grand Forks, Etc., Co.*, 24 N. D. 645, 140 N. W. 725, 47 L. R. A. (N. S.) 246.

*Oregon*.—*Matlock v. Scheuerman* (1908), 51 Oreg. 49, 93 Pac. 823, 17 L. R. A. (N. S.) 747.

*Rhode Island*.—*McLean v. Bryer*, 24 R. I. 599, 54 Atl. 373.

*South Carolina*.—*Williams v. Weekly* (1915), 84 S. E. 299.

*Tennessee*.—*Easley v. East Tenn. Nat. Bk.* (1917), 198 S. W. 66.

*Virginia*.—*Aragon Coffee Co. v. Rogers* (1906), 105 Va. 51; *Am. Bk. of Orange v. McComb* (1906), 105 Va. 473, 54 S. E. 14; *Pennington v. Third Nat. Bk. of Columbus, Ga.* (1913), 77 S. E. 455; *Colona v. Parksley Nat. Bk.* (1917), 92 S. E. 979.

*United States*.—*Pensacola State Bk. v. Melton* (1913), 210 Fed. 57.

**§ 54. Notice before full amount paid.** Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.<sup>1, 1a</sup>

See text, § 129.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Receiving instrument in fraud renders title defective. *Ensign v. Crandall*, — Mo. App. —, 231 S. W. 675.

When one pays full amount agreed upon prior to notice of defect he may recover. *Montgomery Garage Co. v. Manufacturers Liability Ins. Co.*, — N. J. —, 109 A. 296.

Nonpayment of note when due as notice affecting payment of balance of purchase money. *Albany County Bank v. People's Ice Co.*, 92 App. Div. 47, 86 N. Y. Supp. 773.

Where indorsee retained one-half the price for three notes and defendant sets up defense to first one, indorsee entitled to receive only half. *Rosenbaum v. Roth*, 164 App. Div. 617, 150 N. Y. Supp. 396.

Notice to agent is notice to principal. *Baruch v. Buckley*, 167 App. Div. 113, 151 N. Y. Supp. 853.

Indorsee entitled only to recover as to portion paid prior to notice of defects. *First National Bank v. Buffalo Brewing Co.*, 154 N. Y. Supp. 765.

Indorsee not bound to stop payment on check after notice of infirmities of note purchased. *Miller v. Marks*, 46 Utah 257, 148 Pac. 412.

No notice of infirmity of note until after payment of certificate of deposit. *Duncan v. Broadway Nat. Bank*, — Va. —, 102 S. E. 577.

Where no notice of depositor's defective title bank should recover. *Bancroft v. McKnight*, 11 Richardson (Law) 663; *Sering's Appeal*, 10 Barr 235.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Arkansas*.—*Morehead v. Harris* (1916), 182 S. W. 521.

*California*.—*Griswold v. Morrison* (Cal. App.), 200 Pac. 62.

*Illinois*.—*Weir & Craig Mfg. Co. v. Bonus* (1913), 177 Ill. App. 626.

*Indiana*.—*Lapp v. Merchants Nat. Bank*, 123 N. E. 231.

*Iowa*.—*Citizen's State Bk. v. Lankin* (1912), 134 N. W. 882.

*Louisiana*.—*Amer. Nat. Bank v. Patterson*, 83 So. 218.

*Michigan*.—*People's State Bk. v. Miller* (1915), 152 N. W. 257.

*Missouri*.—*Chitwood v. Hatfield* (1909), 136 Mo. App. 688; *Link v. Jackson* (1911), 158 Mo. App. 63, 139 S. W. 588; 53 Nat. Bk. v. Mc-

*Crory* (1915), 177 S. W. 1058; *Mount v. Neighbors Imp. & Vehicle Co.* (1916), 189 S. W. 614; *Ensign v. Crandall* (Mo. App.), 231 S. W. 675.

*Nebraska*.—*Ostenberg v. Kavka* (1914), 145 N. W. 713.

*New Jersey*.—*Montgomery Garage Co. v. Manufacturers Liability Ins. Co.*, 109 Atl. 296.

*New York*.—*Perth-Amboy Mut. Loan Assn. v. Chapman* (1903), 80 A. D. 556; *Albany Co. Bank v. People's Ice Co.*, 86 N. Y. Supp. 773, 92 A. D. 47; *Goetting v. Day* (1904), 87 N. Y. Supp. 510; *Ferguson v. Netter* (1910), 141 A. D. 274; *Rosenbaum v. Roth* (1914), 150 N. Y. Supp. 396, 164 A. D. 617; *Interboro Brewing Co. v. Doyle* (1915), 151 N. Y. Supp. 325; *Baruch v. Buckley*, 151 N. Y. Supp. 853, 167 A. D. 113; *First Nat. Bk. of Winona v. Buff Brewing Co.* (1915), 154 N. Y. Supp. 765; *Title Guar. Co. v. Pain* (1915), 155 N. Y. Supp. 333.

*North Carolina*.—*Johnson v. Lasseter* (1911), 155 N. Car. 47.

*North Dakota*.—*Walters v. Rock* (1908), 18 N. Dak. 45, 115 N. W. 511; *Bank v. Garcean* (1912), 22 N. Dak. 576, 134 N. W. 882.

*Ohio*.—*Hamilton Mech. Tool Co. v. Memphis Nat. Bk.* (1911), 84 Ohio St. 184, 95 N. E. 777.

*Oklahoma*.—*Hudson v. Moore* (1913), 130 Pac. 774; *Voris v. Bird-sall* (1917), 162 Pac. 951; *State v. Emery* (1918), 174 Pac. 770.

*Pennsylvania*.—*Snyder v. Commercial Ex. Nat. Bk.* (1908), 221 Pa. 599, 70 Atl. 876; *Bank of Morehead v. Hernig*, 220 Pa. 224, 69 Atl. 679.

*Utah*.—*Felt v. Bush* (1912), 126 Pac. 688; *Miller v. Marks* (1915), 148 Pac. 412, 46 Utah 257.

*Virginia*.—*Aragon Coffee Co. v. Rogers* (1906), 105 Va. 51; *Pennington v. Third Nat. Bk. of Columbus, Ga.* (1913), 77 S. E. 455.

*Washington*.—*Citizens Bk. & Tr. Co. v. Limpricht* (1916), 160 Pac. 1046.

*Wisconsin*.—*Hodge v. Smith* (1907), 130 Wis. 326, 110 N. W. 192; *Green v. Gunsten* (1913), 142 N. W. 261.

*United States*.—*In re Continental Engine Co.* (1916), 234 Fed. Rep. 58, 148 C. C. A. 74; *Duncan v. Broadway Nat. Bank*, 102 S. E. 577.

§ 55. When title defective. The title of a person who negotiates an instrument is defective within the meaning of this act when he obtains the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.<sup>1, 1a</sup>

See text, §§ 127, 142.

Kansas states "alleged" instead of "illegal," a clerical error.

Minnesota adds an additional section as follows: "6015. Instrument obtained by fraud.—No person, nor the heirs or personal repre-

sentatives of any person, whose signature is obtained to any bill of exchange, promissory note, or other paper negotiable under the law merchant, shall be held liable thereon if it be made to appear that the signature was obtained by fraudulent representation, trick or artifice as to the nature and terms of the contract so signed, that at the time of signing he did not believe it to be a bill of exchange, promissory note, or other paper negotiable under the law merchant, and that he was not guilty of negligence in signing such paper without knowledge of its terms. The question of negligence in any suit on such contract shall in all cases be one of fact for the jury, and the person sought to be charged thereon shall be entitled to have the question of his negligence submitted to a jury."

The Wisconsin Act (Secs. 1676-25) adds to this section the following: "And the title of such person is absolutely void when such instrument or signature was so procured from a person who did not know the nature of the instrument and could not have obtained such knowledge by the use of ordinary care."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Note taken as collateral by person without knowledge of defect before maturity is held in due course. *Burnham Loan & Investment Co. v. Sethman*, — Colo. —, 171 Pac. 884.

Former statutes declaring void instruments given for gambling debt or usurious interest repealed. *Wirt v. Stubblefield*, 17 App. D. C. 283.

Proof as to title of holder being defective. *Farmers Trust Co. v. Sprowl*, — Ind. App. —, 126 N. E. 81.

When oral evidence permissible to show agreement not to negotiate. *McNight v. Parsons*, 136 Iowa 390, 113 N. W. 858, 125 Am. St. Rep. 265, 15 Ann. Cas. 665, 22 L. R. A. (N. S.) 718.

Note obtained by duress is voidable only. *State v. Wegener* (Iowa), 162 N. W. 1040.

Confidential adviser of widow procuring note by fraud. *Lundean v. Hamilton*, — Iowa —, 159 N. W. 163.

Where indorser's title is defective on account of fraud. *Ford v. Ott*, — Iowa —, 173 N. W. 121.

Question of being a good faith holder is for the jury. *Plank v. Swift*, — Iowa —, 174 N. W. 236.

Indorsee has burden of proof when shown that note was procured by fraud. *Underwood v. Leichtman*, — Iowa —, 176 N. W. 683.

Fraud is a defense against subsequent holders not in due course. *Rinella v. Faylor*, — Iowa —, 180 N. W. 983.

Former gambling statute not repealed as to negotiable instruments. *Alexander v. Hazelrigg*, 123 Ky. Law Rep. 1212, 97 S. W. 353.

Whether A embezzled the proceeds or made the negotiation with fraudulent intent is question for jury. *Demelman v. Brazier*, 198 Mass. 458, 84 N. E. 856.

Holder in due course may recover as to part of joint makers when part only were makers by forgery. *First National Bank v. Shaw*, 157 Mich. 192, 121 N. W. 811.

When negligence in not reading instrument renders makers liable to holder in due course. *Van Slyke v. Rooks*, 181 Mich. 88, 147 N. W. 579.

Misrepresentation of fact in procuring note affects title. *People's State Bank v. Miller*, 185 Mich. 565, 152 N. W. 257.

Agreement to return note if maker dissatisfied with land does not throw burden upon holder in due course. *Snelling State Bank v. Clasen*, 132 Minn. 404, 157 N. W. 643.

Fraud in obtaining signature to instrument which when detached is a note affects title of indorsee. *Stevens v. Pearson* (Minn.), 163 N. W. 769.

Fraudulent misrepresentations of financial standing as affecting note. *First Nat. Bank v. Denfeld*, — Minn. —, 173 N. W. 661.

Knowledge of plaintiff's cashier that notes were not proceeds of collections made and that they were taken in bad faith affects right of recovery. *State Bank of Rogers v. Missia*, — Minn. —, 175 N. W. 614.

Fraud as illegal consideration. *Albrecht v. Rathai*, — Minn. —, 185 N. W. 259.

Assignment of nonassignable saloon license as part consideration does not render note void in hands of holder in due course. *Farmers' Sav. Bank v. Reed*, 192 Mo. App. 344, 180 S. W. 1002.

Notice to make title defective must be actual. *Morehead v. Cummins*, — Mo. App. —, 230 S. W. 656.

Fraud on part of plaintiff's agent was effective against indorsee of agent who purchased after maturity. *Northwestern Improvement Co. v. Rhoades*, 52 Mont. 428, 158 Pac. 832.

Note failing to state consideration as required by statute is void between parties and indorsees with notice. *Benton v. Sikyta*, 84 Neb. 808, 122 N. W. 1057, 24 L. R. A. (N. S.) 1057.

Former usury statute repealed. *Schlesinger v. Kelly*, 114 App. Div. 546, 99 N. Y. Supp. 1083.

Fraudulent diversion places burden of proving indorsee holder in due course upon indorsee. *Peterson v. Alton*, 162 App. Div. 21, 147 N. Y. Supp. 280.

Failure to read instrument providing for detachment of attached note renders maker liable to holder in due course. *Munnich v. Jaffe*, 164 App. Div. 30, 149 N. Y. Supp. 338.

Notice of effective title transferred. *Vogel v. Pyne*, 189 N. Y. Supp. 285.

Check indorsed in unlawful gambling transaction is good when suit brought by payee although paid to his indorsee. *Drinkall v. Movius State Bank*, 11 N. D. 10, 88 N. W. 724.

Breach of warranty is not a defense and must be set up as counterclaim. *First National Bank v. Sayer*, 35 S. D. 581, 153 N. W. 652.

Effect of illegal consideration on title. *State v. Emery*, — Okla. —, 174 Pac. 770.

Defective title as shown by one taking note after others of series due. *LeRoy v. Meadows*, — Okla. —, 200 Pac. 858.

Note given for interest at unlawful rate makes payee's title defective. *Keene v. Behan*, 40 Wash. 505, 82 Pac. 884.

Former usury statute not repealed by negotiable instruments law. *Askridge v. Thomas* (W. Va.), 91 S. E. 7 (usury).

Where fraud makes title defective as to one maker it does so as to all joint makers. *Hodge v. Smith*, 130 Wis. 326, 110 N. W. 192.

Failure to state consideration as required by statute note was void between parties. *Quiggle v. Herman*, 131 Wis. 379, 111 N. W. 479.

Fraud operates as to all makers. *Aukland v. Arnold*, 131 Wis. 64, 111 N. W. 212.

When innocent purchaser of note not stating consideration is holder in due course although statute requires consideration be stated. *Sampson v. Ward*, 147 Wis. 48, 132 N. W. 629.



Intoxication of maker affects negotiability. *Green v. Gunster*, 154 Wis., 69, 142 N. W. 261.

Note given for purchase price of article bought upon fraudulent representations. *Jones v. Brandt*, — Wis. —, 181 N. W. 813.

Parol to show nonnegotiation agreement between parties not holders in due course. *Holdsworth v. Blyth & Fargo Co.*, 23 Wyo. 52, 146 Pac. 603.

Effect of fraud as to one maker upon other joint makers. *Schmidt v. Bank of Commerce*, 234 U. S. 64.

Bonds made void by prior statute not affected. In re *Valecia Condensed Milk Co.*, 233 Fed. Rep. 173.

Negotiation in breach of faith to one with notice of dishonor renders title defective. *Hornby v. McLaren* (C. A. March 31, 1908), 24 T. L. Rep. 494.

Overdue bill indorsed in blank sold on judicial proceedings may give title. *Alock v. Smith*, 1 Ch. 238.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Hass v. Commerce Trust Co.* (1915), 69 So. 89; *Peoples' Bank & Trust Co. v. Floyd* (1917), 75 So. 940; *Jones v. Martin* (1917), 74 So. 761; *Bernheimer v. Gray* (1918), 78 So. 840.

*Arizona*.—*Hurley v. Wilky* (1916), 156 Pac. 83.

*Arkansas*.—*Moore v. Wade* (1916), 186 S. W. 828.

*California*.—*Merchants Collection Agency v. Roantrue* (1918), 173 Pac. 600.

*Colorado*.—*Johnson Co. Sav. Bk. v. Gregg* (1911), 51 Colo. 358, 117 Pac. 1003; *First Nat. Bk. of Iowa City v. Smith* (1913), 136 Pac. 460; *Burnham Loan and Investment Co. v. Sethman*, 171 Pac. 884.

*Connecticut*.—*Johnson Co. Sav. Bk. v. Walker* (1909), 82 Conn. 24; s. c., 79 Conn. 348, 65 Atl. 132 (1906), 80 Conn. 509, 60 Atl. 15; *Continental Credit Co. v. Ely* (1917), 100 Atl. 435.

*Idaho*.—*Shellenberger v. Nourse* (1911), 20 Ida. 323, 118 Pac. 508; *Park v. Johnson* (1911), 20 Ida. 548, 119 Pac. 52; *Park v. Brandt* (1911), 20 Ida. 660, 119 Pac. 877; *Winter v. Hutchins* (1911), 20 Ida. 749, 119 Pac. 883; *Brown v. Miller* (1912), 22 Ida. 307, 125 Pac. 981; *Southwestern Nat. Bk. of Kansas City v. Lindley* (1916), 158 Pac. 1082.

*Illinois*.—*Black v. Downes* (1912), 176 Ill. App. 358; *Christina v. Cuseniano* (1912), 129 Ill. 873, 57 So. 157.

*Indiana*.—*Farmers Trust Co. v. Sprowl*, 126 N. E. 81.

*Iowa*.—*Keegan v. Rock* (1905), 128 Iowa 39, 102 N. W. 805; *McKnight v. Parsons* (1907), 136 Iowa 390, 113 N. W. 858, 125 Am. St. 265; *Cox v. Cline* (1908), 139 Iowa 128, 117 N. W. 48; *O'Connor v. Kleiman* (1909), 143 Iowa 435, 121 N. W. 1088; *Citizen's State Bk. v. Lankin* (1912), 134 N. W. 882; *Bk. of Bushnell v. Buck Bros.* (1913), 142 N. W. 1004; *Stotts v. Fawfield* (1914), 145 N. W. 61; *First Nat. Bk. of Shenandoah v. Hall* (1915), 169 Iowa 218, 151 N. W. 120; *Perry Sav.*

*Bk. v. Fitzgerald*, 167 Iowa 446, 149 N. W. 477 (usury); *LeClere v. Philpot* (1915), 151 N. W. 825; *Loos v. Callendar Sav. Bk.* (1916), 156 N. W. 712; *State v. Wegener* (1917), 162 N. W. 1040; *German-Am. Bk. v. Kelley* (1918), 166 N. W. 1053; *Lundean v. Hamilton*, 159 N. W. 163; *Ford v. Ott*, 173 N. W. 121; *Plank v. Swift*, 174 N. W. 236; *Underwood v. Leichtman*, 176 N. W. 683; *Rivella v. Faylor*, 180 N. W. 983.

*Kansas*.—*Underwood v. Quantie* (1911), 116 Pac. 361; *Bk. of Wilber v. Freeburg* (1911), 84 Kans. 235; *Murchison v. Nies* (1912), 87 Kans. 77; *The Stock Ex. Bk. v. Wykes* (1913), 88 Kans. 750; *Ireland v. Shore* (1914), 137 Pac. 926; *Farmers Nat. Bk. of Lincoln v. Francis* (1917), 164 Pac. 146; *Rodgers v. Slaveno* (1917), 165 Pac. 655; *First Nat. Bk. v. Stroup* (1919), 177 Pac. 836.

*Kentucky*.—*Laurence v. First Nat. Bank*, 31 Ky. Law Rep. 318, 102 S. W. 324; *McAfee v. Mercer Nat. Bank*, 31 Ky. Law Rep. 863, 104 S. W. 287; *Asbury v. Taube* (1912), 151 S. W. 372; *Muir v. Edelen* (1913), 160 S. W. 1048; *Gahren, Dodge & Maltby v. Parkersburg Nat. Bk.* (1914), 162 S. W. 1135; *Harrison v. Ford* (1914), 165 S. W. 663; *Alexander v. Hazelrigg*, 123 Ky. Law Rep. 1212, 97 S. W. 353; *Holzbog v. Barrow*, 156 Ky. 161, 160 S. W. 792, 50 L. R. A. (N. S.) 1023.

*Maryland*.—*Stouffer v. Alford* (1910), 114 Md. 110, 78 Atl. 387; *American Agriculture Chemical Co. v. Scringer* (1917), 100 Atl. 774; *Spoerer v. Wehland* (1917), 100 Atl. 287, 130 Md. 226.

*Massachusetts*.—*Caldwell v. Nash* (1906), 190 Mass. 507; *Demelman v. Brazier* (1907), 193 Mass. 588, 79 N. E. 812; *Clemons Elec. Mfg. Co. v. Walton* (1910), 206 Mass. 215; *Lewiston Trust & Safe Dep. Co. v. Shackford* (1913), 213 Mass. 432; *Anthony & Cowell Co. v. Brown* (1913), 214 Mass. 439; *Palmbaum v. Magulsky* (1914), 104 N. E. 746.

*Michigan*.—*First Nat. Bk. of Durand v. Shaw* (1909), 157 Mich. 192, 121 N. W. 811, *Van Slyke v. Rooks*, 181 Mich. 88, 147 N. W. 579; *J. D. Gruber Co. v. Smith* (1917), 162 N. W. 124; *Loveland v. Bump* (1917), 165 N. W. 855; *People's State Bk. v. Miller*, 185 Mich. 565, 152 N. W. 257.

*Minnesota*.—*Thorpe v. Cooley* (1917), 165 N. W. 265; *Snelling St. Bank v. Clasen*, 132 Minn. 404, 157 N. W. 643; *First Nat. Bank v. Denfeld*, 173 N. W. 661; *State Bank of Rogers v. Missia*, 175 N. W. 614; *Albrecht v. Rathai*, — Minn. —, 185 N. W. 259.

*Missouri*.—*Whitener v. Scoggins* (1910), 152 Mo. App. 343; *Jobes v. Wilson* (1910), 124 S. W. 548; *Link v. Jackson* (1911), 158 Mo. App. 63, 139 S. W. 588; *Birch Tree State Bk. v. Dowler* (1912), 163 Mo. 65, 145 S. W. 843; *Hill v. Dillon* (1913), 161 S. W. 881; *Bank of Polk v. Wood* (1915), 173 S. W. 1093; *Farmers' Sav. Bank v. Reed*, 192 Mo. App. 344, 180 S. W. 1002; *Newburg State Bk. v. Heflin* (1915), 175 S. W. 297; *Miller v. People's Sav. Bk.* (1916), 186 S. W. 547; *Ozark Motor Co. v. Horton* (1917), 196 S. W. 395; *Pioneer Stock Powder Co. v. Goodman* (1918), 201 S. W. 576; *Morehead v. Cummins*, 230 S. W. 656.

*Montana*.—*State Bk. of Moore v. Forsythe* (1910), 41 Mont. 249; *Northwestern Imp. Co. v. Rhoades*, 52 Mont. 428, 158 Pac. 832.

*Nebraska.*—Benton v. Sikyta, 84 Neb. 808, 122 S. W. 60, 24 L. R. A. (N. S.) 1057, *contra*; Bothell v. Miller, 87 Neb. 835, 128 N. W. 628; Bolew v. Wright (1911), 89 Neb. 116, 131 N. W. 185; Ostenberg v. Kavka (1914), 145 N. W. 713.

*New Jersey.*—Bensel v. Anderson (1916), 96 Atl. 910.

*New Mexico.*—Bk of Commerce v. Broyles (1911), 120 Pac. 670; First Nat. Bk. of Albuquerque v. Stover (1916), 155 Pac. 905.

*New York.*—M. Groh's Sons Co. v. Schneider (1901), 34 Misc. 195, 68 N. Y. Supp. 682; Strickland v. Henry (1901), 66 A. D. 23, 73 N. Y. Supp. 121; Citizens Bk. of Buffalo v. The Rung Furniture Co. (1902), 76 A. D. 471; Sutherland v. Mead (1903), 80 A. D. 103, 80 N. Y. Supp. 504; Perth-Amboy Mut. Loan Assn. v. Chapman (1903), 80 A. D. 556; Mitchell v. Baldwin (1903), 88 A. D. 265, 84 N. Y. Supp. 1043; Goetting v. Day (1904), 87 N. Y. Supp. 510; Schreyer v. Bailey & Co. (1904), 97 A. D. 185; Hamilton Nat. Bk. v. Upton (1905), 100 A. D. 105; Schlesinger v. Kelly (1906), 114 A. D. 546, 99 N. Y. Supp. 1083; Douglass v. Richards (1906), 116 A. D. 27; Elliott v. Brady (1907), 118 A. D. 208; Peterson v. Alton, 147 N. Y. Supp. 280, 162 A. D. 21; Schlesinger v. Gilhooly (1907), 189 N. Y. 1, 91 N. E. 619; Horwitz v. Wollowitz (1908), 59 Misc. 520, 110 N. Y. Supp. 972; Munnich v. Jaffe, 149 N. Y. Supp. 338, 164 A. D. 30; Schlesinger v. Lehmaier (1908), 191 N. Y. 69, 83 N. E. 657, 16 L. R. A. (N. S.) 626, 123 Am. St. 591; Ward v. City Tr. Co. (1908), 192 N. Y. 61, 84 N. E. 585; Packard v. Figlinolo (1909), 114 N. Y. Supp. 753; Klar v. Kostuk (1909), 119 N. Y. Supp. 683, 65 Misc. Rep. 199; Cluett v. Conture (1910), 140 A. D. 830, 125 N. Y. Supp. 813; Kennedy v. Spilks (1911), 129 N. Y. Supp. 390; Broderick & Bascom Rope Co. v. McGrath (1913), 142 N. Y. Supp. 496, 81 Misc. 222; Crusins v. Siegman, 142 N. Y. Supp. 348, 81 Misc. Rep. 357 (usury); Lang v. Hudgens (1913), 143 N. Y. Supp. 763, 82 Misc. 388; Waxberg v. Stappler (1913), 83 Misc. 78, 144 N. Y. Supp. 608; Zivendling v. Kitrosser (1914), 148 N. Y. Supp. 99; Interboro Brewing Co. v. Doyle (1915), 151 N. Y. Supp. 325; Olser Co. v. Behrend, 151 N. Y. Supp. 873, 89 Misc. Rep. 391; Kass v. Maisel (1915), 155 N. Y. Supp. 217; Title Guar. & Tr. Co. v. Pam (1915), 155 N. Y. Supp. 333; Siegel v. Kovinsky (1916), 157 N. Y. Supp. 340; Empire Trust Co. v. President and Directors Manhattan Co. (1917), 162 N. Y. Supp. 629; Aetna Explosives Co. v. Bassick (1917), 163 N. Y. Supp. 917; Garone v. Russo Iodice Realty Co. (1917), 164 N. Y. Supp. 135 Saline v. Paine, 151 N. Y. Supp. 735, 166 A. D. 93; affirmed 223 N. Y. 401, 119 N. E. 849; Kennedy v. Heyman, 167 N. Y. Supp. 311; Vogel v. Pyne, 189 N. Y. Supp. 285.

*North Carolina.*—Johnston Co. Sav. Bk. v. Chase (1909), 151 N. Car. 108; Hardy v. Mitchell (1911), 156 N. Car. 76, 72 S. E. 95, 161 N. Car. 351; Merchants Nat. Bk. of Indianapolis v. Branson (1914), 81 S. E. 410; A. B. Hunter & Co. v. Sherron (1918), 97 S. E. 5.

*North Dakota.*—Drinkall v. Movius State Bk. (1901), 11 N. Dak. 10, 118 A. D. 10, 88 N. W. 724; Walters v. Rock (1908), 18 N. Dak. 45, 115 N. W. 511; Am. Nat. Bk. v. Lundy (1910), 21 N. Dak. 167, 129 N. W. 99; Bank v. Garcean (1912), 22 N. Dak. 576, 134 N. W. 882; McCarty v. Kepveta (1913), 139 N. W. 992; Dow v. Lillie (1914), 144 N. W. 1082; Grebe v. Swords (1914), 149 N. W. 126; Com. Security Co. v. Jack (1915), 150 N. W. 460.

*Ohio*.—Thompson v. Citizens Nat. Bk. of Adams (1909), 32 O. C. C. 131; State v. Hill (1916), 113 N. E. 1045.

*Oklahoma*.—Hudson v. Moore (1913), 130 Pac. 774; Jones v. Citizen's State Bank (1913), 135 Pac. 373; Western Ex. Bk. of Kansas City v. Coleman (1913), 132 Pac. 488; Keisel v. Baldock (1915), 154 Pac. 1194; Barry v. Kniseley (1916), 155 Pac. 1168; Phillips v. Hargardine-McKittrick Co. (1916), 159 Pac. 320; Huston v. Dorneuy (1918), 173 Pac. 805; Daniels v. Bunch (1918), 172 Pac. 1086; Callahan v. Thurmond (1918), 172 Pac. 798; State v. Emery, 174 Pac. 770; LeRoy v. Meadows, — Okla. —, 200 Pac. 858.

*Oregon*.—Matlock v. Scheuerman (1908), 51 Oreg. 49, 93 Pac. 823, 17 L. R. A. (N. S.) 744; Mills v. Keep (1912), 197 Fed. 360; Baldwin Co. v. Savage (1916), 159 Pac. 80; Rostad v. Thorsen (1917), 163 Pac. 423; Wicks v. Metcalf (1917), 163 Pac. 988; Kohler & Chase Co. v. Savage (1917), 167 Pac. 789.

*Pennsylvania*.—Second Nat. Bk. of Pittsburg v. Hoffman (1911), 229 Pa. St. 429, 78 Atl. 1002.

*Rhode Island*.—Hill v. Veloso (1915), 31 R. I. 160.

*South Dakota*.—Peterson v. Hoftiezer (1915), 150 N. W. 934; First Nat. Bank v. Sayer, 35 S. Dak. 581, 153 N. W. 652.

*Tennessee*.—Unaka Nat. Bk. of Butler (1904), 113 Tenn. 674, 83 S. W. 655.

*Texas*.—Henderson v. McDaniel (1916), 186 S. W. 865.

*Utah*.—Cole Banking Co. v. Sinclair (1908), 34 Utah 454, 98 Pac. 411; Leavitt v. Thurston (1911), 38 Utah, 351, 113 Pac. 77.

*Virginia*.—Aragon Coffee Co. v. Rogers (1906), 105 Va. 51; Pennington v. Third Nat. Bk. of Columbus, Ga. (1913), 77 S. E. 455.

*Washington*.—Yakima Valley Bk. v. McAllister (1905), 37 Wash. 566, 79 Pac. 1119; Nethercutt v. Hopkins (1905), 38 Wash. 577, 80 Pac. 798; Keene v. Behan (1905), 40 Wash. 505, 82 Pac. 884; Hynes v. Plastino (1906), 45 Wash. 190, 87 Pac. 1127; Moyses v. Bell (1911), 62 Wash. 534, 114 Pac. 193; Wells v. Duffy (1912), 69 Wash. 310; Fournier v. Cornish (1913), 133 Pac. 9; Shultz v. Crewdson (1917), 163 Pac. 734; West Va.-Twentieth Street Bank v. Jacobs, 74 W. Va. 525, 82 S. E. 320 (gaming); Askridge v. Thomas (W. Va.), 91 S. E. 7 (usury).

*Wisconsin*.—The New Bank of Eau Claire v. Kleiner (1901), 112 Wis. 287; Hodge v. Smith (1907), 130 Wis. 326, 110 N. W. 192; Aukland v. Arnold (1907), 131 Wis. 64; Quiggle v. Herman (1907), 131 Wis. 379, 111 N. W. 479; Samson v. Ward (1911), 147 Wis. 84, 132 N. W. 629; Jones v. Brandt, 181 N. W. 813.

*Wyoming*.—Acme Coal Co. v. Northrup Nat. Bk. of Iola (1915), 146 Pac. 593; Holdsworth v. Blyth & Fargo (1915), 23 Wyo. 52, 146 Pac. 603, 146 Pac. 603.

*United States*.—Wood v. Babbitt (1907), 149 Fed. 818; Wirt v. Stubble field (1900), 17 App. D. C. 283; Crosby v. Reynolds (1912), 196 Fed. 640; Yates Nat. Bk. v. Lauber (1915), 240 Fed. 237; Patten v. Duntley

(1915), 227 Fed. 381 (C. C. A. 7th Ct.); *Bk. of Morehead v. Hernig* (1908), 220 Pac. 224; *Cutler v. Fray* (1917), 240 Fed. 238; *Yates Center Nat. Bk. v. Schaede* (1917), 240 Fed. 240.

§ 56. What constitutes notice of defect. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith,<sup>1</sup> 1a

See text, § 129.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Facts which if followed will show defect may charge purchaser with knowledge. *Elmore Co. Bank v. Avant*, 189 Ala. 418, 66 So. 509.

Correspondence as to other notes not notice of defect. *Neil v. Central Nat. Bank*, — Ala. —, 78 So. 73.

Purchaser not required to make investigation without notice. *Ellis v. First Nat. Bank*, — Ariz. —, 172 Pac. 281.

Delivery as collateral security as being notice of defect. *Burnham Loan & Investment Co. v. Sethman*, — Colo. —, 171 Pac. 884.

Bank has no notice of defects although president is director of company making note where the president of bank had no knowledge of renewal agreement. *First National Bank v. Fairfield Auto Co.* (Conn.), 99 Atl. 577.

Negligence may not always prevent recovery by indorsee. *Hutchins v. Langley*, 27 App. D. C. 234.

Condition for return of notes given if company not organized is binding on indorsee who had knowledge. *Sumter Co. State Bank v. Hays*, 68 Fla. 473, 67 So. 109.

Partial payment indorsements as of date of issue do not always put purchaser on notice. *Bland v. Fidelity Trust Co.* (Fla.), 71 So. 630.

Wilful ignorance of facts shows bad faith. *Park v. Brandt*, 20 Idaho 660, 119 Pac. 877.

Good faith is question for jury. *Winter v. Hutchins*, 20 Idaho 749, 119 Pac. 883.

Notice of crookedness in other transactions does not control an otherwise bona fide purchase. *Vaughan v. Brandt*, 21 Idaho 628, 123 Pac. 191.

Judgment for defendant reversed where uncontradicted evidence showed plaintiff's good faith. *Southwest Nat. Bank v. Baker*, 23 Idaho 428, 130 Pac. 799.

Care necessary on part of purchaser to show good faith. *Burdell v. Nereson*, 28 Idaho 129, 152 Pac. 576.

Inquiry as to partner's authority to use partnership note for individual purposes. *Redfield v. Wells*, — Idaho —, 173 Pac. 640.

Good faith implies honest intent. *Schintz v. American Trust & Sav. Bk.*, 152 Ill. App. 76.

To defeat holder it must be shown that he took in bad faith. *First Nat. Bank v. Garner*, — Ind. —, 119 N. E. 711.

When evidence has tendency to show fraud burden is on indorsee and

it becomes a jury question. *McNight v. Parsons*, 136 Iowa 390, 113 N. W. 858, 22 L. R. A. (N. S.) 718, 15 Ann. Cas. 665.

Purchaser who suspects a defense must investigate. *Iowa Nat. Bank v. Carter*, 144 Iowa 715, 123 N. W. 237.

Rule as to actual notice is same as at common law. *Arnd v. Aylesworth*, 145 Iowa 185, 123 N. W. 1000, 29 L. R. A. (N. S.) 638.

Wilful neglect or gross carelessness show bad faith. *Farmers and Merchants Bank v. Shaffer* (Iowa), 147 N. W. 851.

When court may direct verdict for holder of note procured by fraud of transferor. *German-American Nat. Bank v. Kelley* (Iowa), 166 N. W. 1053.

To charge indorsee with defective title through fraud it must be shown he had notice of the fraud at time of purchase. *Ford v. Ott*, — Iowa —, 173 N. W. 121.

Where purchase at less than one-third value shows knowledge of defect. *Underwood v. Leichtman*, — Iowa —, 176 N. W. 683.

Denial by indorsee of knowledge or notice of fraud is sufficient. *Bothwell v. Corum*, 135 Ky. 766, 123 S. W. 291.

Payment of one-third for note may not prove bad faith purchase. *Ham v. Merritt*, 150 Ky. 11, 149 S. W. 1131.

Discount of one-fourth does not of necessity charge purchaser with knowledge of fraud in procuring same. *Pratt v. Rounds*, 160 Ky. 358, 169 S. W. 848.

Note payable to guardian discounted and funds placed to credit of individual account by bank is notice to bank. *Taylor v. Harris' Admr.*, 164 Ky. 645, 176 S. W. 168.

Purchaser with notice of infirmity affects his right of recovery as well as the payee. *Eichberg v. Board of Education*, 165 Ky. 814, 178 S. W. 1075.

Purchaser must have such knowledge as will amount to bad faith to constitute notice of defect. *Mechanic's Sav. Bank v. Berry*, — Me. —, 111 Atl. 533.

Purchaser without notice of payee's failure to carry out executory agreement may recover. *Black v. Bank of Westminster*, 96 Md. 399, 54 Atl. 88.

Suspicious circumstances may not prevent recovery. *Valley Savings Bank v. Mercer*, 97 Md. 458, 55 Atl. 435.

Check payable to one as "attorney" is negotiable. *First Denton Nat. Bank v. Kennedy*, 116 Md. 124, 81 Atl. 227, Ann. Cas. 1913B, 1337.

Presentation of note indorsed in blank does not constitute notice of defects. *Mass. Nat. Bank v. Snow*, 187 Mass. 159, 72 N. E. 959.

Where one deposits in his own account a check to him as trustee, he having no trust account, does not put bank on notice. *Batchelder v. Central Nat. Bk.*, 188 Mass. 25, 73 N. E. 1024.

Where creditor takes checks in good faith indorsed to him by treasurer of corporation, individually, which were issued to the treasurer, the creditor has no notice. *Fillebrow v. Hayward*, 190 Mass. 472, 77 N. E. 45.

City may recover money paid upon a check by its treasurer to his creditor. *Newburyport v. Fidelity Insurance Co.*, 197 Mass. 596, 84 N. E. 111.

Indorsees of check on city given by its treasurer in payment of individual debts liable for moneys had and received. *City of Newburyport v. Spear*, 204 Mass. 146, 90 N. E. 522.

Question of good faith not raised where treasurer issued corporate checks to his creditor. *Johnson-Kittell Co. v. Longley Luncheon Co.*, 207 Mass. 52, 92 N. W. 1035.

Town treasurer's authority to indorse check payable to town is limited to deposit for collection only. *Franklin Sav. Bank v. International Trust Co.*, 215 Mass. 231, 102 N. E. 363.

Bank not put upon inquiry by action of treasurer of town who forged note. *City of Newburyport v. First Nat. Bank*, 216 Mass. 304, 103 N. E. 782.

Check payable to treasurer of town puts all persons upon notice that he can not indorse it for circulation. *Quincy Mut. Fire Ins. Co. v. International Trust Co.*, 217 Mass. 370, 104 N. E. 845, L. R. A. (N. S.) 1915B 725.

Notice that something is wrong is sufficient to show bad faith. *Paika v. Perry*, 225 Mass. 563, 114 N. E. 830.

Plaintiff's undisputed evidence as to good faith is not question for jury. *Van Slyke v. Rooks*, 181 Mich. 88, 147 N. W. 579.

President's personal check on his own bank does not give notice of overdraft. *Pope v. Ramsay Co. State Bank (Minn.)*, 162 N. W. 1051.

What circumstances constitute notice of defect. *First Nat. Bank v. Anderson*, — Minn. —, 175 N. W. 544.

Knowledge that cashier is using bank funds for personal purposes shows bad faith. *St. Charles Savings Bank v. Edwards*, 243 Mo. App. 553, 147 S. W. 978.

Corporation check drawn by officer in payment of his debt puts creditor upon inquiry. *Reynolds v. Title Guaranty Trust Co. (Mo. App.)*, 189 S. W. 33.

Signing of company check by officer in presence of payee creditor puts payee upon inquiry. *Coleman v. Stocke*, 159 Mo. App. 43, 139 S. W. 216.

Purchaser need not know all particulars to be guilty of bad faith. *Ozark Motor Co. v. Horton (Mo. App.)*, 196 S. W. 395.

Actual knowledge as notice of defect. *Mechanics American Nat. Bank v. Helmbacher*, 199 Mo. App. 173.

Indorsee is holder in due course where he had no knowledge as to defenses. *Swift & Co. v. McFarland*, — Mo. App. —, 231 S. W. 65.

Where pledgee had no knowledge of pledgor's lack of authority, he is not bound by fact that bonds are municipal bonds payable to bearer. *Borough of Montvale v. People's Bank*, 74 N. J. Law 464, 67 Atl. 67.

Plausible explanation of erasure at time of purchase may make purchaser holder in due course. *Goetting v. Day*, 87 N. Y. Supp. 510.

Purchase at one-half within six weeks of maturity sufficient to send question of good faith to jury. *Becker v. Hart*, 135 App. Div. 785, 120 N. Y. Supp. 270.

Trust company taking check on itself in payment of debt of president of company issuing the check is put upon inquiry. *Lanning v. Trust Co. of America*, 137 App. Div. 722, 122 N. Y. Supp. 485.

Check signed by guardian gives constructive notice of payment from trust funds. *Empire State Surety Co. v. Nelson*, 141 App. Div. 850, 126 N. Y. Supp. 453.

Checks indorsed by corporation by its president who has no authority to indorse puts bank where deposited upon inquiry. *Niagara Woolen Co. v. Pacific Bank*, 141 App. Div. 265, 126 N. Y. Supp. 890.

Where inquiry if made would show apparent authority for partnership manager to appropriate proceeds of check to individual use it is no de-

fense that inquiry was not made. *Buckley v. Lincoln Co.*, 72 Misc. Rep. 218, 131 N. Y. Supp. 105.

Indorsee put upon inquiry by notes payable to vice-president of corporation and signed by him as vice-president for the corporation. *Neuman v. Neuman*, 160 App. Div. 331, 145 N. Y. Supp. 325.

Notice given by form of indorsement calls for reasonable inquiry. *Fensterer v. Pressurde Lighting Co.*, 85 Misc. Rep. 621, 149 N. Y. Supp. 49.

Suspicious explanation of words on a check put indorsee upon inquiry. *Monk v. Twenty-Third Ward Bank*, 165 N. Y. Supp. 1055.

When fact that payee is director of corporation does not put purchaser upon inquiry. *Orr v. South Amboy Terra Cotta Co.*, 113 App. Div. 103, 98 N. Y. 1026.

President's indorsement of check, payable to his corporation, in payment of his debt gives notice of misuse. *Ward v. City Trust Co.*, 192 N. Y. 61, 84 N. E. 585.

Note signed by executors of estate gives notice of payment to be made from trust funds. *Squire v. Ordemann*, 194 N. Y. 394, 87 N. E. 435.

Bank held agent of railroad in determining whether checks by latter's treasurer to himself and having acted in good faith could not be proceeded against by railroad. *Havana Central Railroad Co. v. Knickerbocker Trust Co.*, 198 N. Y. 422, 92 N. E. 12, L. R. A. 1915B 720, 27 B. L. J. 51.

Sufficiency of evidence to show bad faith discount. *Ironbound Trust Co. v. Schmidt-Dauber Co.*, 169 N. Y. S. 524.

Knowledge necessary to give notice of defense. *Morris v. Muir*, 181 N. Y. S. 913.

Circumstances as giving notice of defective title. *Vogel v. Pyne*, 189 N. Y. Supp. 285.

Purchase by one who suspects, but fails to investigate to see if defense exists is not purchaser in good faith. *Walter v. Rock* (N. D.), 115 N. W. 511.

Taking one of series of notes after part are due as notice of defective title. *LeRoy v. Meadows*, — Okla. —, 200 Pac. 858.

When bank liable to surety on guardian's bond for permitting the latter to draw trust funds on individual checks. *U. S. Fidelity, etc., Co. v. U. S. Nat. Bank*, 80 Ore. 361, 157 Pac. 155, L. R. A. 1916E, 610.

Circumstances surrounding purchase may or may not show bad faith and present a question for jury. *Everding v. Toft*, 82 Ore. 1, 160 Pac. 1160.

Showing necessary as to defect of title. *Hill v. McCrow*, 88 Ore. 299.

Notice rule applies to all classes of persons. *Cox & Sons Co. v. North Brewing Co.*, 245 Pa. 418, 91 Atl. 859, Ann. Cas. 1916A 86.

Corporation check given by employee in payment of latter's debt puts payee upon inquiry. *Sheer v. Hall & Lyon Co.*, 36 R. I. 47, 88 Atl. 801.

Acts which constitute notice. *Ochsenreiter v. Block*, — S. D. —, 173 N. W. 736.

Loser of check indorsed in blank can not recover from drawee bank who has paid to holder in due course after notice of loss. *Unaka Nat. Bank v. Butler*, 113 Tenn. 574, 83 S. W. 655.

Certificate of deposit payable to one as trustee gives notice to purchaser. *Ford v. Brown*, 114 Tenn. 467, 88 S. W. 1036.

Note negotiable in form is good in hands of holder in due course although not enforceable by payee because of ultra vires purposes of issue.



*Jefferson Bank v. Chapman-White Lyons Co.*, 122 Tenn. 215, 123 S. W. 641.

When presumption of knowledge not raised by discount of \$200 to \$400. *Miller v. Marks*, 46 Utah 227, 148 Pac. 412.

Payment of one-half on note payable in inaccessible place in absence of other evidence of bad faith is not sufficient to show bad faith purchase. *McNamara v. Jose*, 28 Wash. 461, 68 Pac. 903.

Insufficiency of property mortgaged to secure note to pay same does not put purchaser upon inquiry. *Barker v. Sartori*, 66 Wash. 260, 119 Pac. 611.

Written agreement for discharge of note on return of automobile not inadmissible in evidence as contradicting note. *Washington Trust Co. v. Keyes*, 79 Wash. 61, 139 Pac. 638, Ann. Cas. 1916A, 279.

Large discount purchases may put purchaser upon inquiry. *Moore & Co. v. Burling*, 93 Wash. 217, 160 Pac. 420.

Holder in due course not bound by payee creditors accepting a check signed by an officer of a company in payment of his individual debt. *Nat. City Bank v. Shelton Electric Co.*, 96 Wash. 74, 164 Pac. 933.

Purchase with intent to collect or enforce payment before real date of note which was erroneously dated is evidence of bad faith. *Naylor v. Lovell*, — Wash. —, 186 Pac. 855.

Actual knowledge as to defects is notice. *Larsen v. Betcher*, — Wash. —, 195 Pac. 27.

What necessary to constitute notice of defect. *Guaranty Security Co. v. Coad*, — Wash. —, 195 Pac. 22.

Holder in due course with knowledge that note given for definite land at definite price is not charged with knowledge of failure of title or shortage of guaranty. *Dollar Savings & Trust Co. v. Crawford*, 69 W. Va. 109, 70 S. E. 1089, 33 L. R. A. (N. S.) 587.

Plaintiff's knowledge that treasurer of corporation, who was payee of note indorsed, was also member of partnership from whom he received note affects the plaintiff's title. *Pelton v. Spider Lake Co.*, 132 Wis. 219, 112 N. W. 29, 122 Am. St. Rep. 963.

Creditor has notice of defects when he takes corporation check signed by his debtor as officer thereof. *Kipp v. Smith*, 137 Wis. 234, 118 N. W. 484.

When bank charged with notice of ward's rights as to check endorsed by guardian. *Brovan v. Kyle* (Wis.), 165 N. W. 383.

When knowledge that treasurer and president of corporation were members of firm negotiating corporate notes, did not affect transfer. In re *Troy & Cohoes Shirt Co.*, 136 Fed. Rep. 420.

Bank held not the agent of corporate depositor to pass upon validity of checks. *Havana Central Railroad Co. v. Central Trust Co.*, 204 Fed. Rep. 546, 123 C. C. A. 72, L. R. A. 1915B, 715.

Offering note for sale before maturity in a state other than where made does not put purchaser upon inquiry. *Bison State Bank v. Billington*, 228 Fed. Rep. 116, 142 C. C. A. 522.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Elmore Co. Bk. v. Avant* (1914), 189 Ala. 418, 66 So. 509; *Sherrill v. Merch. & Mech. Tr. & Sav. Bk.* (1916), 70 So. 723; *Sample v. Tennessee Valley Bank* (Ala.), 76 So. 936; *Neill v. Central Nat. Bank*, 78 So. 73.

*Arizona*.—Ellis v. First Nat. Bk. (1918), 172 Pac. 281; Phoenix Safety Inv. Co. v. Michaels (1919), 176 Pac. 587; Ellis v. First Nat. Bank, 172 Pac. 281.

*Arkansas*.—Keathley v. Holland Banking Co. (1914), 166 S. W. 935; Pinson v. Cobb (1914), 166 S. W. 943; Little v. Arkansas Nat. Bk. (1914), 167 S. W. 75; Hamburg Bank v. Ahrens (1915), 177 S. W. 14; Morehead v. Harris (1916), 182 S. W. 521; Holland Banking Co. v. Booth, 121 Ark. 171, 180 S. W. 978; Manley Carriage Co. v. Fowler & Hill (1917), 194 S. W. 708.

*Colorado*.—First Nat. Bk. of Iowa City v. Smith. (1913), 136 Pac. 460; Wedge Mines Co. v. Denver Nat. Bk. (1903), 19 Colo. App. 182, 73 Pac. 873; Burnham Investment Co. v. Sethman (1918), 171 Pac. 884;

*Connecticut*.—Tice v. Moore (1909), 82 Conn. 244, 73 Atl. 133; Johnson Co. Sav. Bk. v. Walker (1909), 82 Conn. 24; s. c., 79 Conn. 348, 65 Atl. 132 (1906), 80 Conn. 509, 69 Atl. 15; First Nat. Bk. v. Fairfield Auto Co. (1917), 99 Atl. 577.

*Florida*.—Jones v. The Manitowoc Shipbuilding & Dry Dock Co. (1913) 65 Fla. 467; Bland v. Fidelity Tr. Co. (1916), 71 So. 630; Bass v. Lee (1917), 74 So. 7.

*Idaho*.—Winter v. Nobs (1910), 9 Ida. 18, 112 Pac. 525; Shellenberger v. Nourse (1911), 20 Ida. 323, 118 Pac. 508; Park v. Johnson (1911), 20 Ida. 548, 119 Pac. 52; Park v. Brandt (1911), 20 Ida. 660, 119 Pac. 877; Vaughan v. Johnson (1911), 20 Ida. 669, 119 Pac. 879; Winter v. Hutchins (1911), 20 Ida. 749, 119 Pac. 883; Vaughan v. Brandt (1912), 21 Ida. 628, 123 Pac. 191; McCarty v. Lowry (1912), 123 Pac. 943; Redfield v. Wells (1918), 173 Pac. 640; Burdell v. Nereson, 28 Ida. 129, 152 Pac. 576.

*Illinois*.—Schintz v. Am. Tr. & Sav. Bk. (1909), 152 Ill. App. 76; Peterson v. Emery (1910), 154 Ill. App. 294; First Nat. Bk. of Mattoon v. Seass (1910), 158 Ill. App. 122; Black v. Downes (1912), 176 Ill. App. 358; Christina v. Cuseniano (1912), 129 Ill. 873, 57 So. 157; Richter v. Burdock (1913), 257 Ill. 410, 100 N. E. 1063.

*Indiana*.—Bright Nat. Bk. v. Kartman (1915), 109 N. E. 846; Boxell v. Bright Nat. Bk. of Flora (1916), 110 N. E. 962; Parker v. Hickman (1916), 111 N. E. 649; Miami Co. Bank v. State, 61 Ind. App. 360, 112 N. E. 40; First Nat. Bank v. Garner, 119 Ind. 711.

*Iowa*.—Johnson v. Buffalo Bank, 134 Iowa 731, 112 N. W. 165 McKnight v. Parsons (1907), 136 Iowa 390, 113 N. W. 858, 125 Am. St. Rep. 265; Iowa Nat. Bk. v. Carter (1909), 144 Iowa 715, 123 N. W. 237. Arnd v. Aylesworth (1909), 145 Iowa 185, 123 N. W. 1000; Citizen's State Bk. v. Lankin (1912), 134 N. W. 882 Farmer's & Mech. State Bk. v. Shaffer (1914), 147 N. W. 851; Stotts v. Fawfield (1914), 145 N. W. 61; Higby v. Bahrenfus (1917), 163 N. W. 247; Limdeau v. Hamilton (1918), 169 N. W. 208; German-American Nat. Bank v. Kelley, 166 N. W. 1053; Ford v. Ott, 173 N. W. 121; Underwood v. Leichtman, 176 N. W. 683.

*Kansas*.—Youle v. Fosha (1907), 76 Kans. 20, 90 Pac. 1090; People's Bk. of Minneapolis v. Reid (1912), 120 Pac. 339; Murchison v. Nies (1912), 87 Kans. 77; Ireland v. Shore (1914), 137 Pac. 926; First Nat.

*Bk. of Elk City v. Dikeman* (1915), 153 Pac. 559; *Elmo State Bk. v. Hildebrand* (1919), 177 Pac. 6; *Oscar Schmidt, Inc. v. Benedict* (1919), 178 Pac. 444.

*Kentucky.*—*Lawson v. First Nat. Bk. of Fulton* (1907), 31 Ky. L. 318, 102 S. W. 324; *Chateau Tr. & Banking Co. v. Smith* (1909), 133 Ky. 418, 118 S. W. 279; *Bothwell v. Corum* (1909), 135 Ky. 767, 123 S. W. 291; *Childs v. Billiter* (1911), 137 S. W. 795; *Am. Nat. Bk. v. Madison* (1911), 144 Ky. 152, 137 S. W. 1076; *Ham v. Merritt* (1912), 150 Ky. 11, 149 S. W. 1131; *Asbury v. Taube* (1912), 151 S. W. 372; *Citizens Bk. v. Crittenden Record-Press* (1912), 150 Ky. 634; *Pratt v. Rounds*, 160 Ky. 358, 169 S. W. 848; *Gahren, Dodge & Maltby v. Parkersburg Nat. Bk.* (1914), 62 S. W. 1135; *Elk Valley Coal Co. v. Third Nat. Bk. of Lexington* (1914), 163 S. W. 766; *Riehm v. Ill. Tr. & Sav. Bk.* (1915), 176 S. W. 32; *Harrison v. Ford*, 158 Ky. 467, 165 S. W. 663; *Cit. Tr. & Guar. Co. v. Hays* (1915), 167 Ky. 560, 180 S. W. 811; *Eichberg v. Board of Education* (1915), 165 Ky. 814, 178 S. W. 1075; *Bank of Willard v. Pennsylvania & Ky. Firebrick Co.* (1917), 194 S. W. 110; *Citizens' State Bk. of Greenup v. Johnson County* (1919), 207 S. W. 8; *Farmers Bank of Lynnville v. First Nat. Bank*, 164 Ky. 548, 175 S. W. 1019.

*Louisiana.*—*Wolf v. Zachary & N. E. R. Co.* (1911), 128 La. 1092, 55 So. 685; *Dreyfuss v. Papalia* (1918), 78 So. 843; *A. Marx & Sons v. Frey*, 137 La. 948.

*Maine.*—*Mechanic's Savings Bank v. Berry*, 111 Atl. 533.

*Maryland.*—*Black v. Bank of Westminster* (1903), 96 Md. 399, 54 Atl. 88; *Valley Sav. Bk. v. Mercer* (1903), 97 Md. 458, 55 Atl. 435; *Weant v. Southern Tr. & Dep. Co.* (1910), 112 Md. 463, 77 Atl. 289; *Wilson v. Kelso* (1911), 115 Md. 162, 80 Atl. 895; *Zielian v. Baltimore Plate Ice Co.* (1911), 115 Md. 658, 81 Atl. 22; *Denton Nat. Bk. v. Kennedy* (1911), 116 Md. 124, 81 Atl. 227.

*Massachusetts.*—*Mass. Nat. Bk. v. Snow* (1905), 187 Mass. 159, 72 N. E. 959; *Fillebrown v. Hayward* (1906), 190 Mass. 472, 77 N. E. 45; *Batchelder v. Central Nat. Bk.*, 188 Mass. 25, 73 N. E. 1024; *Bass v. Inhabitants of Wellesley* (1906), 192 Mass. 526; *City of Newburyport v. Fid. Mut. L. Ins. Co.* (1908), 197 Mass. 596, 84 N. E. 111; *Fiogenspan v. McDonnell* (1909), 201 Mass. 341, 87 N. E. 624; *City of Newburyport v. Spear* (1910), 204 Mass. 146; *Ford v. Shapiro* (1910), 207 Mass. 108; *Johnson-Kittell Co. v. Langley-Luncheon Co.*, 207 Mass. 52, 92 N. W. 1035; *Brown v. Newburyport* (1911), 209 Mass. 259; *Broadway Nat. Bk. of Chelsea v. Hefferman* (1915), 107 N. E. 921; *Paika v. Perry* (1917), 225 Mass. 563, 114 N. E. 830; *Allen v. Fourth Nat. Bank*, 224 Mass. 239, 112 N. E. 650; *City of Newburyport v. First Nat. Bank*, 216 Mass. 304, 103 N. E. 782; *Quincy Mut. Fire Ins. Co. v. International Trust Co.*, 217 Mass. 370, 104 N. E. 845, L. R. A. (N. S.) 1915B; *Kendall v. Fidelity Trust Co. (Mass.)*, 119 N. E. 861.

*Michigan.*—*Hakes v. Thayer* (1911), 165 Mich. 478, 131 N. W. 174; *Van Slyke v. Rooks* (1914), 147 N. W. 579; *Stevens v. Venema* (1918), 168 N. W. 531.

*Minnesota.*—*Pope v. Ramsey Co. State Bk.* (1917), 162 N. W. 1051; *State Bank of Morton v. Adams* (1919), 170 N. W. 925; *First Nat. Bank v. Anderson*, 175 N. W. 544.

*Missouri*.—Chitwood v. Hatfield (1909), 136 Mo. App. 688; Burchett v. Fink (1909), 139 Mo. App. 381; Johnson Co. Sav. Bk. v. Redfearn (1910), 141 Mo. App. 386; Reeves v. Litts (1910), 143 Mo. App. 196, 128 S. W. 246; Settles v. Moore & Scobee (1910), 149 Mo. App. 724; Hill v. Dillon (1910), 151 Mo. App. 86; Coleman v. Stocke (1911), 159 Mo. App. 43, 139 S. W. 216; Link v. Jackson (1911), 158 Mo. App. 63, 139 S. W. 588; St. Charles Sav. Bk. of Edwards (1912), 243 Mo. 553, 147 S. W. 978; Hill v. Dillon (1913), 161 S. W. 881; Southwest Bk. of Kansas City v. House (1913), 157 S. W. 809; State Bk. of Freeport v. Cape Girardeau & C. R. Co. (1913), 155 S. W. 1111; Farmers Sav. Bk. v. Reed (1915), 180 S. W. 1002; Mercantile Tr. Co. v. Donk (1915), 178 S. W. 113; Willis v. Reed (1916), 190 S. W. 377; Miller v. Peoples Sav. Bank (Mo. App.), 186 S. W. 547; Central Bank of Columbia v. Lyda (1917), 191 S. W. 245; German-American Bank v. Smith (1919), 208 S. W. 878; Atkins v. Brown (1919), 208 S. W. 502; Mechanics American Nat. Bank v. Helmbacher, 199 Mo. App. 173, 201 S. W. 383; Swift & Co. v. McFarland, 231 S. W. 65.

*Montana*.—State Bk. of Moore v. Forsythe (1910), 41 Mont. 249; Buhler v. Loftus (1917), 165 Pac. 601; Baker State Bank v. Grant (1917), 166 Pac. 27.

*Nebraska*.—First State Bank of Pleasant Dale v. Borchers (1909), 83 Neb. 530, 120 N. W. 142; Benton v. Sikyta (1909), 84 Neb. 808, 122 S. W. 60; Bolew v. Wright (1911), 89 Neb. 116, 131 N. W. 185; Storz Brewing Co. v. Skirving (1913), 142 N. W. 669; Ostenberg v. Kavka (1914), 145 N. W. 713; Hatfield v. Jakway (1919), 170 N. W. 181.

*New Jersey*.—Borough of Montwale v. Peoples Bk. (1907), 87 Atl. 67; Rice v. Barrington (1908), 75 N. J. L. 806, 70 Atl. 169; DeYonge & Co. v. Woodport Hotel & Land Co. (1909), 77 N. J. L. 233; Davis v. Clark (1914), 90 Atl. 303.

*New Mexico*.—Sandall v. Norment (1915), 145 Pac. 259.

*New York*.—First Nat. Bk. of Fort Worth v. Am. Ex. Nat. Bk. (1900), 49 A. D. 349; McCannon v. Shantz (1900), 149 A. D. 460; McGroh's Sons Co. v. Schneider (1901), 34 Misc. 195, 68 N. Y. Supp. 682; Ketcham v. Govin (1901), 35 Misc. 375, 71 N. Y. Supp. 991; Metropolitan Bk. v. Engel (1901), 66 A. D. 273; Campbell v. Upton (1901), 66 A. D. 434; Citizens Bk. of Buffalo v. The Rung Furniture Co. (1902), 76 A. D. 471; Sutherland v. Mead (1903), 80 A. D. 103, 80 N. Y. Supp. 504; Perth-Amboy Mut. Loan Assn. v. Chapman (1903), 80 A. D. 556; Packard v. Windholz (1903), 84 N. Y. Supp. 666, 40 Misc. 347, affirmed 88 A. D. 365; Jennings v. Carlucci (1904), 87 N. Y. Supp. 475; Schreyer v. Bailey & Co. (1904), 97 A. D. 185; Meuer v. Phenix Nat. Bk. (1904), 94 A. D. 331, 88 N. Y. Supp. 83; Poess v. Twelfth Ward Bk. (1904), 43 Misc. 45, 86 N. Y. Supp. 857; Orr v. So. Amboy Terra Cotta Co. (1905), 94 N. Y. Supp. 524, 47 Misc. 604; Hamilton Nat. Bk. v. Upton (1905), 100 A. D. 105; Douglass v. Richards (1906), 116 A. D. 27; Nat. Bk. of Newport v. Snyder Mfg. Co. (1907), 117 A. D. 370, 102 N. Y. Supp. 478; Siegmeister v. Lispenard Realty Co. (1907), 107 N. Y. Supp. 158; Rice v. Eisler (1907), 119 A. D. 132; Schlesinger v. Lehmaier (1908), 191 N. Y. 69, 83 N. E. 657, 16 L. R. A. (N. S.) 626, 123 Am. St. 591; Ward v. City Tr. Co. (1908), 192 N. Y. 61, 84 N. E. 585; The Royal Bk. of N. Y. v. German-Am. Ins. Co.

(1908), 58 Misc. 563; *U. S. Ex. Bk. v. Zimmerman* (1908), 113 N. Y. Supp. 33; *Strauss v. St. Louis Co. Bk.* (1908), 126 A. D. 647; *Barbieri v. Casazza* (1909), 115 N. Y. Supp. 1074; *Republic Life Ins. Co. v. Hudson Trust Co.* (1909), 130 A. D. 618; *Squire v. Ordemann* (1909), 194 N. Y. 394; *Frank v. Wolff* (1910), 125 N. Y. Supp. 530; *Niagara Woolen Co. v. Pacific Bank* (1910), 141 A. D. 265; *Cluett v. Couture* (1910), 140 A. D. 830, 125 N. Y. Supp. 813; *Havana Cent. R. Co. v. Knickerbocker Trust Co.* (1910), 198 N. Y. 422, 92 N. E. 12, L. R. A. 1915B 720, 27 B. L. J. 51; *Eisenberg v. Lefkowitz* (1911), 142 A. D. 569; *Hurst v. Lee* (1911), 143 A. D. 614, 127 N. Y. Supp. 1040; *Kennedy v. Spilka* (1911), 129 N. Y. Supp. 390; *Buckley v. Lincoln Co.*, 131 N. Y. Supp. 105, 72 Misc. Rep. 218; *Raisky v. Fred A. Smith Co.* (1913), 139 N. Y. Supp. 1088; *Cleary v. Dykeman* (1914), 146 N. Y. Supp. 611; *Coffin v. Tevis* (1914), 149 N. Y. Supp. 986, 164 Misc. 314; *Feusterer v. Pressure Lighting Co.* (1914), 149 N. Y. Supp. 49, 85 Misc. 621; *Rosenbaum v. Roth* (1914), 150 N. Y. Supp. 396, 164 A. D. 617; *Cole v. Harrison* (1915), 153 N. Y. Supp. 200; *Flood v. Steinmetz* (1915), 153 N. Y. Supp. 192; *Oliner v. Gronich* (1915), 154 N. Y. Supp. 612; *Anchor Realty Co. v. Bankers Trust Co.* (1916), 161 N. Y. Supp. 300; *Hartford Nat. Bk. v. Gardner* (1916), 157 N. Y. Supp. 849; *Thornton v. Netherlands-Amer. Steam Nav. Co.* (1917), 165 N. Y. Supp. 682; *Monk v. 23d Ward Bank* (1917), 165 N. Y. Supp. 1055; *Hudson Boiler Mfg. Co. v. Cardillo* (1919), 174 N. Y. Supp. 638; *Bischoff v. Yorkville Bank*, 218 N. Y. 106, 112 N. E. 759; *Ironbound Trust Co. v. Schmidt-Dauber Co.*, 169 N. Y. Supp. 524; *Morris v. Muir*, 181 N. Y. Supp. v. 913; *Vogel v. Pyne*, 189 N. Y. Supp. 285.

*North Carolina.*—*Toms v. Jones* (1900), 127 N. Car. 464; *Setzer v. Deal* (1904), 135 N. Car. 428; *Murchison Nat. Bk. v. Dunn Oil Mills Co.* (1909), 150 N. Car. 718, 64 S. E. 885; *Johnston Co. Sav. Bk. v. Chase* (1909), 151 N. Car. 108; *Bk. of Sampson v. Hatcher* (1909), 151 N. Car. 359, 66 S. E. 308; *First Nat. Bk. of Lumberton v. Brown* (1912), 160 N. Car. 23; *Vance v. Bryan* (1912), 158 N. Car. 502, 74 S. E. 459; *J. L. Smathers & Co. v. Toxaway Hotel Co.* (1913), 78 S. E. 224; *First Nat. Bk. v. Warsaw Drug Co.* (1914), 81 S. E. 993; *Smathers & Co. v. Toxaway Hotel Co.* (1914), 83 S. E. 844; *Sykes v. Everett* (1914), 83 S. E. 585.

*North Dakota.*—*Walters v. Rock* (1908), 18 N. Dak. 45, 115 N. W. 511; *Am. Nat. Bk. v. Lundy* (1910), 21 N. Dak. 167, 129 N. W. 99; *Bank v. Garcean* (1912), 22 N. Dak. 576, 134 N. W. 882; *McCarty v. Kepweta* (1913), 139 N. W. 992; *Johanna v. Lennon* (N. D.), 755 N. W. 685.

*Ohio.*—*Thompson v. Citizens Nat. Bk. of Adams* (1909), 32 O. C. C. 131; *Hamilton Mach. Tool Co. v. Memphis Nat. Bk.* (1911), 84 Ohio St. 184, 95 N. E. 777.

*Oklahoma.*—*First State Bk. of Oklahoma v. Tobin* (1913), 134 Pac. 395; *Hudson v. Moore* (1913), 130 Pac. 774; *Jones v. Citizen's State Bk.* (1913), 135 Pac. 373; *Western Ex. Bk. of Kansas City v. Coleman* (1913), 132 Pac. 488; *Hardin v. Dale* (1915), 146 Pac. 717; *Security Tr. Co. v. Gluckman* (Okla.), 150 Pac. 908; *Ringer v. Wilson* (1916), 154 Pac. 1145; *Lambert v. Smith* (Okla.), 157 Pac. 909, 911; *Cline v. First Nat. Bk.* (1918), 170 Pac. 472; *Mangold & Glandt Bk. v. Utterback* (1918), 174 Pac. 542; *Producer's Nat. Bank v. Elrod* (1918), 173 Pac. 659; *LeRoy v. Meadows*, — Okla. —, 200 Pac. 858.

*Oregon.*—Matlock v. Scheuerman, 51 Ore. 49, 93 Pac. 823, 17 L. R. A. (N. S.) 477; Everding & Farrell v. Toft (1916), 82 Ore. 1, 160 Pac. 1160; Lassas v. McCarty, 47 Ore. 747, 84 Pac. 76; U. S. Fidelity, etc., Co. v. U. S. Nat. Bank, 80 Ore. 361, 157 Pac. 155, L. R. A. 1916E 610; Hill v. McCrow, 88 Ore. 299.

*Pennsylvania.*—Johnson Co. Sav. Bk. v. Kock (1908), 38 Pa. Super. Ct. 553; Lowry National Bank v. Hazard (1909), 223 Pa. 520; People's Nat. Bk. of Pensacola v. Hazard (1911), 80 Atl. 554; Dominion Trust Co. v. Hildner (1914), 90 Atl. 69; Cox & Sons Co. v. Northampton Brewing Co. (1914), 91 Atl. 859; Levy v. Gilligan (1914), 90 Atl. 647.

*South Carolina.*—Merchants Nat. Bk. v. Smith (1918), 96 S. E. 690.

*South Dakota.*—Ochsenreiter v. Block, 173 N. W. 736.

*Tennessee.*—Unaka Nat. Bk. v. Butler (1904), 113 Tenn. 574, 83 S. W. 655; Ford v. Brown (1905), 114 Tenn. 467; Pease & Dwyer Co. v. State Nat. Bk. (1905), 114 Tenn. 693, 88 S. W. 172; Jefferson Bk. of St. Louis v. Chapman-White Lyons Co. (1909), 122 Tenn. 415, 123 S. W. 641; First Nat. Bk. of Elgin, Ill. v. Russell (1911), 139 S. W. 734; Madison Tr. Co. v. Stahlman (1916), 183 S. W. 1012.

*Texas.*—Henderson v. McDaniel (1916), 186 S. W. 865.

*Utah.*—Cole Banking Co. v. Sinclair (1908), 34 Utah 454, 98 Pac. 411; McCormick v. Swem (1909), 36 Utah 6, 102 Pac. 626; Miller v. Marks, 46 Utah 227, 148 Pac. 412.

*Virginia.*—Aragon Coffee Co. v. Rogers (1906), 105 Va. 51; City Nat. Bk. of Roanoke v. Hundley (1911), 70 S. E. 494; Pennington v. Third Nat. Bk. of Columbus, Ga. (1913), 77 S. E. 455; City Nat. Bk. v. McDonald (1914), 83 S. E. 389; Hawkes v. Bowles (1916), 2 Va. Law Reg. N. S. 268; Ratcliffe v. Costello (1915), 85 S. E. 469; Fleshman v. Bibb (1916), 118 Va. 582, 88 S. E. 64; Castron v. Bostic (1918), 96 S. E. 845.

*Washington.*—McNamara v. Jose (1902), 28 Wash. 461, 68 Pac. 903; Yakima Valley Bk. v. McAllister (1905), 37 Wash. 566, 79 Pac. 1119; Keene v. Behan (1905), 40 Wash. 505, 82 Pac. 884; Johnson Co. Sav. Bk. v. Rapp (1907), 47 Wash. 30, 91 Pac. 382; Spencer v. Alki Point Transp. Co. (1909), 53 Wash. 77, 101 Pac. 509; Gray v. Boyle (1909), 55 Wash. 578, 104 Pac. 828, 133 Am. St. Rep. 1042; Scandanavian Am. Bk. v. Johnston (1911), 63 Wash. 187, 115 Pac. 102; Scandanavian Am. Bk. v. Appleton (1911), 63 Wash. 203, 115 Pac. 109; Moyses v. Bell, 62 Wash. 534, 114 Pac. 193; Wells v. Duffy (1912), 69 Wash. 310; Fournier v. Cornish (1913), 133 Pac. 9; German-American Bank v. Wright, 85 Wash. 460, 148 Pac. 769; Washington Trust Co. v. Keyes (1914), 139 Pac. 638; Citizens Bk. & Trust Co. v. Limpricht (1916), 160 Pac. 1046; Moore & Co. v. Burling, 93 Wash. 217, 160 Pac. 420; City Nat. Bk. v. Shelton Elec. Co. (1917), 164 Pac. 993; Schultz v. Crewdson (1917), 163 Pac. 734; Naylor v. Lovell, 186 Pac. 855; Guaranty Security Co. v. Coad, 195 Pac. 22; Larson v. Betcher, 195 Pac. 27.

*West Virginia.*—Interstate Finance Co. v. Schroeder (1914), 81 S. E. 552; U. S. Fidelity Co. v. Home Bank, 77 W. Va. 665, 88 S. E. 109.

*Wisconsin.*—Quiggle v. Herman (1907), 131 Wis. 379, 111 N. W. 479; Pelton v. Spider Lake S. & L. Co. (1907), 132 Wis. 219, 112 N. W.

29, 122 Am. St. 963; Kipp v. Smith (1908), 137 Wis. 234, 118 N. W. 848; Brevan v. Kyle (Wis.), 165 N. W. 383.

*Wyoming*.—Holdsworth v. Blyth & Fargo (1915), 146 Pac. 603.

*United States*.—Hutchins v. Langley (1906), 27 A. C. (D. C.) 34; Martin v. Poole (1911), 36 A. C. (D. C.) 281; Howell v. Commercial Nat. Bk. (1913), 40 A. C. (D. C.) 370; Hazen v. Van Senden (1915), 43 D. C. App. 161; Mills v. Keep (1912), 197 Fed. 360; First Nat. Bk. of Shenandoah v. Linver (1911), 187 Fed. 16, 109 U. S. C. C. A. 70; Nat. Bk. of Commerce in St. Louis v. Sancho Pag. Co. (1911), 110 C. C. A. 112, 186 Fed. 257; Amalgamated Sugar Co. v. U. S. Nat. Bk. of Portland (1911), 109 C. C. A. 494; Young v. Lowry (1912), 192 Fed. 825, 113 C. C. A. 149; Washington & Canonsburg Ry. Co. v. Murray (1914), 211 Fed. 440; Bison St. Bk. v. Billington (1915), 228 Fed. 116; Piedmont & Caro Ry. Co. v. Shee (1915), 223 Fed. 973; Postal Tel. Cable Co. v. Citizens Nat. Bk. (1916), 228 Fed. 601; Brent v. Simpson (1916), 238 Fed. 285; Stockyard Nat. Bk. of St. Paul, Minn. v. First Nat. Bank of Towner, N. D. (1918), 249 Fed. 421.

**§ 57. Rights of holder in due course.** A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.<sup>1</sup> <sup>1a</sup>

See text, § 126.

The Illinois Act makes fraud touching the execution and makes gambling consideration "real defenses" and good against a holder in due course.

The Wisconsin Act (Secs. 1676-27) adds the following: "Except as provided in Sections 1944 and 1945 of these statutes, relating to insurance premiums, and also in cases where the title of the person negotiating such instrument is void under the provision of Sections 1676-25 of this act."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Bona fide purchaser takes note free from defects. *Davis v. Simpson*, — Ala. —, 79 So. 48.

Transferee's rights measured by rights of assignor: *Fortson v. Bishop*, — Ala. —, 86 So. 399.

Holder in due course need not investigate circumstances as to inception. *Ellis v. First Nat. Bank*, — Ariz. —, 172 Pac. 281.

Holder in due course may recover on note made without consideration. *Weir & Craig Co. v. Bonus*, 177 Ill. App. 626.

Bona fide holder without notice of defect is holder in due course. *Lapp v. Merchant's Nat. Bank of Indianapolis*, — Ind. App. —, 123 N. E. 231.

Suit by bank against maker and not payee indorser. *Choteau Trust & Banking Co. v. Smith*, 133 Ky. 418, 118 S. W. 279.

Rights of holder in due course as against prior parties to note. *Lynchburg Shoe Co. v. Hensley*, — Ky. —, 218 S. W. 243.

When issue of fraud immaterial *Bovarnick v. Davis*, — Mass. —, 126 N. E. 380.

Notice of warranty in sales agreement as affecting status of holder in due course. *Commercial Credit Co. v. McDonough Co.* — Mass. —, 130 N. E. 179.

Bank in which fraudulently obtained check was deposited by payee paid part to payee, could not recover against maker. *Southwestern National Bank v. House*, 172 Mo. App. 197, 157 S. W. 809.

Holder in due course may recover. *Montgomery Garage Co. v. Manufacturer's Liability Ins. Co.*, — N. J. —, 109 Atl. 296.

Usury laws not repealed and a transaction violating such laws avoids a note in hands of holder in due course. *Sabine v. Paine*, 166 App. Div. 9, 151 N. Y. Supp. 735, affirmed, 223 N. Y. 401, 119 N. E. 849.

Where plaintiff has no knowledge that check was indorsed for gambling debt he may recover from drawer. *Poshkoff v. Bernstein*, 95 Misc. Rep. 140, 159 N. Y. Supp. 207.

Note void as between original parties by reason of usurious interest by national bank is good in hands of state bank who is bona fide holder in due course. *Schlesinger v. Lehmaier*, 191 N. Y. 69, 83 N. E. 657, 16 L. R. A. (N. S.) 626.

Holder may sue maker or indorser and latter may set off holder's indebtedness to him. *Curtis v. Davidson*, 215 N. Y. 395, 109 N. E. 481.

Effect of transfer without indorser signing upon holder in due course. *Critcher v. Ballard*, — N. C. —, 104 S. E. 134.

Purchaser at two-thirds discount may be holder in due course and recover full amount. *Lassas v. McCarty*, 47 Ore. 474, 84 Pac. 76.

Holder in due course recovers full amount of instrument. *Jefferson Bank v. Chapman-White-Lyons Co.*, 122 Tenn. 415, 123 S. W. 641.

Note which does not comply with lightning rod statute may be good in hands of holder in due course. *Arnd v. Sjoblom*, 131 Wis. 642, 111 N. W. 666, 10 L. R. A. (N. S.) 842.

Statute as to set-off not changed by Missouri negotiable instruments law. *Worden v. Gillett*, 275 Fed. 654.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Snead v. Barclift* (1911), 2 Ala. App. 297; *Norris v. Merchants Nat. Bk.* (1911), 2 Ala. App. 434, 57 So. 71; *Bledsoe v. City Nat. Bk. of Selma* (1912), 7 Ala. App. 195, 60 So. 942; *Hudson v. Repton State Bk.* (1917), 75 So. 695; *Jones v. Martin* (1917), 74 So. 761; *Jones v. Bell* (1917), 77 So. 918; *Sample v. Tennessee Valley Bk.* (1917), 76 So. 936; *Vogler v. Manson* (1917), 76 So. 117; *Davies v. Simpson*, 79 So. 48; *Fortson v. Bishop*, 86 So. 399; *Arizona-Ellis v. First Nat. Bank*, 172 Pac. 281.

*Arkansas*.—*Little v. Arkansas Nat. Bk.* (1914), 167 S. W. 75; *Manley Carriage Co. v. Fowler and Hill* (1917), 194 S. W. 708; *Huff v. Iowa City State Bk.* (1918), 204 S. W. 306.

*Connecticut*.—*Mersick v. Alderman* (1905), 77 Conn. 634, 60 Atl. 109; *Johnson Co. Sav. Bk. v. Walker* (1909), 82 Conn. 24; s. c., 79 Conn. 348, 65 Atl. 132 (1906), and 80 Conn. 509, 69 Atl. 15; *Continental Credit Co. v. Ely* (1917), 100 Atl. 435.



*Delaware*.—Security Tr. & Safe Dep. Co. v. Duross (1913), 86 Atl. 209.

*Florida*.—Jones v. The Manitowoc Shipbuilding and Dry Dock Co. (1913), 65 Fla. 467; Bland v. Fidelity Co. (1916), 71 So. 630.

*Idaho*.—McCarty v. Lowry (1912), 123 Pac. 943; Nelson v. Hudgel (1913), 23 Ida. 327, 130 Pac. 85; Southwest Nat. Bk. of Kansas City v. Baker (1913), 23 Ida. 428, 130 Pac. 799; Harshbarger v. Eby (1916), 156 Pac. 619.

*Illinois*.—Black v. Downes (1912), 176 Ill. App. 358; Weir & Craig Co. v. Bonus, 177 Ill. App. 626; Richter v. Burdock (1913), 257 Ill. 410, 100 N. E. 1063; Niblack v. Farley (1919), 122 N. E. 160.

*Indiana*.—Lapp v. Merchants Nat. Bank, 123 N. E. 231.

*Iowa*.—Commercial Nat. Bk. v. Citizens State Bk. (1906), 132 Iowa 706, 109 N. W. 198; Vander Ploey v. Van Zunk (1907), 135 Iowa 350, 112 N. W. 807; McKnight v. Parsons (1907), 136 Iowa 390, 113 N. W. 858, 125 Am. St. 265; Kushner v. Abbott (1912), 137 N. W. 913.

*Kansas*.—Nyhart v. Kubach (1907), 76 Kans. 154, 90 Pac. 796; Gate City Nat. Bk. v. Thrall (1911), 85 Kans. 394.

*Kentucky*.—Alexander v. Hazelrigg (1906), 123 Ky. 677, 97 S. W. 353; Citizens Bk. v. Bk. of Waddy (1907), 126 Ky. 169, 103 S. W. 249; Chateau Tr. and Banking Co. v. Smith (1909), 133 Ky. 418, 118 S. W. 279; Bothwell v. Corum (1909), 135 Ky. 767, 123 S. W. 291; Lovelace v. Lovelace (1910), 136 Ky. 452, 124 S. W. 400; Jett v. Standaefer (1911), 143 Ky. 787, 137 S. W. 513; Holzbog v. Bakrow (1913), 160 S. W. 792; Gahren-Dodge and Maltby v. Parkersburg Nat. Bk. (1914), 162 S. W. 1135; Pratt v. Rounds (1914), 169 S. W. 848; Lynchburg Shoe Co. v. Hensley, 218 S. W. 243.

*Louisiana*.—Wolf v. Zachary & N. E. R. Co. (1911), 128 La. 1092, 55 So. 685.

*Maryland*.—Weant v. Southern Tr. and Dep. Co. (1910), 112 Md. 463, 77 Atl. 289.

*Massachusetts*.—Mass. Nat. Bk. v. Snow (1905), 187 Mass. 159, 72 N. E. 959; Fillebrown v. Hayward (1906), 190 Mass. 472; City of Newburyport v. Spear, 204 Mass. 146, 90 N. E. 522; Franklin Sav. Bank v. International Trust Co., 215 Mass. 231, 102 N. E. 363; Quincy Mut. Fire Ins. Co. v. International Trust Co., 217 Mass. 370, 104 N. E. 845, L. R. A. 1915B 725; Colonial Fur Ranching Co. v. First Nat. Bank (1917), 116 N. E. 731; Willard v. Greenwood (1917), 117 N. E. 823; Newburyport v. Fidelity Ins. Co., 197 Mass. 596, 84 N. E. 111; Bovarnick v. Davis, 126 N. E. 380; Commercial Credit Co. v. M. McDonough, 130 N. E. 179.

*Michigan*.—Hakes v. Thayer (1911), 131 N. W. 174; People's State Bk. v. Miller (1915), 152 N. W. 257.

*Missouri*.—State Nat. Bk. of Shawnee v. Levy (1910), 141 Mo. App. 288; Southwest Nat. Bk. of Kansas v. House (1913), 172 Mo. App. 197, 157 S. W. 809; Coleman v. Stacke, 159 Mo. App. 43, 139 S. W. 216; St. Charles Savings Bank v. Edwards, 243 Mo. App. 553, 147 S. W. 978; Hadley v. Greenville (1916), 187 S. W. 1096; Reynolds v. Title Guaranty

Trust Co. (Mo. App.), 189 S. W. 33; *Miller v. Chinn* (1917), 195 S. W. 552; *Jefferson Bank v. Merchants Refrigerating Co.*, 236 Mo. 407, 139 S. W. 545.

*Montana*.—*Baker State Bank v. Grant* (1917), 166 Pac. 27.

*Nebraska*.—*Benton v. Sikyta* (1909), 84 Neb. 808, 122 S. W. 60; *Storz Brewing Co. v. Skirving* (1913), 142 N. W. 669; *Ostanberg v. Kavka* (1914), 145 N. W. 713.

*New Jersey*.—*Rice v. Barrington* (1906), 75 N. J. L. 806, 70 Atl. 169; *Davis v. Clark* (1914), 90 Atl. 303; *Clark v. Barthold* (1915), 93 Atl. 699; *Bensel v. Anderson* (1916) (N. J. Ch.), 96 Atl. 910; *Montgomery Garage Co. v. Manufacturer's Liability Ins. Co.*, 109 Atl. 296.

*New York*.—*Ketcham v. Govin* (1901), 35 Misc. 375, 71 N. Y. Supp. 991; *Benedict v. Kress* (1904), 89 N. Y. Supp. 607; *Greaser v. Sugarman* (1902), 76 N. Y. Supp. 922, 37 Misc. 799; *Sutherland v. Mead* (1903), 80 A. D. 103, 80 N. Y. Supp. 504; *Albany Co. Bk. v. People's Co-op. Ice Co.* (1904), 92 A. D. 47, 86 N. Y. Supp. 73; *Broadway Trust Co. v. Manheim* (1905), 47 Misc. 415, 95 N. Y. Supp. 93; *Schlesinger v. Kelly* (1906), 114 A. D. 546, 99 N. Y. Supp. 1083; *Siegmeister v. Lispenard Realty Co.* (1907), 107 N. Y. Supp. 158; *The Gansevort Bank of N. Y. v. Gilday* (1907), 110 N. Y. Supp. 271, 53 Misc. 107; *Schlesinger v. Gilhooley* (1907), 189 N. Y. 1, 81 N. E. 619; *Schlesinger v. Lehnaier* (1908), 191 N. Y. 69, 83 N. E. 657, 16 L. R. A. (N. S.) 626, 123 Am. St. 591; *Bruck v. Lambeck* (1909), 118 N. Y. Supp. 494; *Lanning v. Trust Co. of America*, 122 N. Y. Supp. 485, 137 A. D. 722; *Klar v. Kostink* (1909), 119 N. Y. Supp. 683; *Niagara Woolen Co. v. Pacific Bank*, 126 N. Y. Supp. 890, 141 A. D. 265; *Ward v. City Trust Co.*, 192 N. Y. 61, 84 N. E. 585; *Hurst v. Lee* (1911), 143 A. D. 614, 127 N. Y. Supp. 1040; *Eq. Tr. Co. v. Taylor* (1911), 131 N. Y. Supp. 475, 72 Misc. 52; *Eisenberg v. Lefkowitz* (1911), 142 A. D. 569; *Broderick & Bascom Rope Co. v. McGrath* (1913), 142 N. Y. Supp. 496, 81 Misc. 222; *Crusins v. Siegman* (1913), 142 N. Y. Supp. 348; *Cleary v. Dykeman* (1914), 146 N. Y. Supp. 611; *Emanuel v. Misicke* (1914), 149 N. Y. Supp. 905; *Oeser v. Behrend* (1915), 151 N. Y. Supp. 873; *Baldinger & Kupferman Mfg. Co. v. Manf.-Citizens Tr. Co.* (1915), 156 N. Y. Supp. 445; *Curtis v. Davidson* (1915), 215 N. Y. 395, 109 N. E. 481; *Title Guar. Co. v. Pain* (1915), 155 N. Y. Supp. 333; *Poshkoff v. Bernstein*, 159 N. Y. Supp. 207, 95 Misc. Rep. 140; *Miller v. Campbell* (1916), 160 N. Y. Supp. 834; *Garone v. Russo Iodice Realty Co.* (1917), 164 N. Y. Supp. 135; *Thornton v. Netherlands Amer. Steam Nav. Co.* (1917), 165 N. Y. Supp. 682; *United Cigar Store Co. v. American Raw Silk Co.* (1918), 171 N. Y. Supp. 480; *Kennedy v. Heyman*, 167 N. Y. Supp. 311; *Sabine v. Paine* (1918), 223 N. Y. 401, 119 N. E. 849.

*North Carolina*.—*Murchison Nat. Bk. v. Dunn Oil Mills Co.* (1909), 150 N. Car. 718, 64 S. E. 885; *Vance v. Bryan* (1912), 158 N. Car. 502, 74 S. E. 459; *Amer. Nat. Bk. of Richmond v. Hill* (1915), 85 S. E. 209; *Critcher v. Ballard*, 104 S. E. 134.

*North Dakota*.—*Nat. Bk. of Commerce v. Pick* (1904), 13 N. Dak. 74, 99 N. W. 63.

*Ohio*.—*Spring Valley Nat. Bk. v. Somers* (1910), 21 Ohio Dec. 772; *Hamilton Mach. Tool Co. v. Memphis Nat. Bk.* (1911), 84 Ohio St. 184, 95 N. E. 777.

*Oklahoma.*—Jenkins v. Planters, Etc., Bank, 34 Okla. 607, 126 Pac. 757; Wood v. Stickle (1912), 128 Pac. 1082; First State Bk. of Oklahoma City v. Tobin (1913), 134 Pac. 395; Hodgins v. Northwestern Finance Co. (1915), 148 Pac. 717; Mangold & Glandt Bk. v. Utterback (1918), 174 Pac. 542.

*Oregon.*—Lassas v. McCarty (1906), 47 Oreg. 474, 84 Pac. 76; Bailey v. Inland Empire Co. (1915), 146 Pac. 991; Clarinda Trust & Sav. Bk. v. Doty (1917), 163 Pac. 418.

*Pennsylvania.*—Homewood People's Bk. v. Heckert (1903), 207 Pa. 231; People's Nat. Bk. of Pensacola v. Hazard (1911), 80 Atl. 554; In re Young's Estate (1912), 83 Atl. 201; Wolfgang v. Shirley (1913), 86 Atl. 1011.

*Rhode Island.*—Sheer v. Hall & Lyon Co., 36 R. I. 47, 88 Atl. 801.

*South Carolina.*—Iowa City State Bk. v. Hoefer (1915), 85 S. E. 406.

*Tennessee.*—Unaka Nat. Bk. v. Butler (1904), 113 Tenn. 674, 83 S. W. 655; Jefferson Bk. of St. Louis v. Chapman-White Lyons Co. (1909), 122 Tenn. 415, 123 S. W. 641.

*Texas.*—Lockney State Bk. v. Martin (1917), 191 S. W. 796 (Tex. Civ. App.); Sayles v. First State Bk. of Abilene (1917), 195 S. W. 230 (Tex. Civ. App.); Zielinski v. Hernig (1917), 195 S. W. 952 (Tex. Civ. App. 3).

*Utah.*—McCormick v. Swem (1909), 36 Utah 6, 102 Pac. 626; Smith v. Brown (1917), 165 Pac. 468; Rosenblum v. Gonnell (1918), 173 Pac. 243.

*Virginia.*—Aragon Coffee Co. v. Rogers (1906), 105 Va. 51; Pennington v. Third Nat. Bk. of Columbus, Ga. (1913), 77 S. E. 455; Anderson v. Union Bk. of Richmond (1915), 83 S. E. 1080; Fleshman v. Bibb (1916), 88 S. E. 64; Colona v. Parksley Nat. Bk. (1917), 92 S. E. 979.

*Washington.*—McNamara v. Jose (1902), 28 Wash. 461, 68 Pac. 303; Jamieson and McFarland v. Heim (1906), 43 Wash. 153, 86 Pac. 165; Amer. Sav. Bk. & Tr. Co. v. Helgesen (1911), 64 Wash. 54, 116 Pac. 837; Schultz v. Crewdson (1917), 163 Pac. 734; City Nat. Bk. v. Shelton Elec. Co. (1917), 96 Wash. 74, 164 Pac. 993.

*West Virginia.*—Interstate Finance Co. v. Schroder (1914), 81 S. E. 552; Rusmisseil v. White Oak Stave Co. (1917), 92 S. E. 672; Nisson v. Shaffer (1918), 96 S. E. 1023.

*Wisconsin.*—Quiggle v. Herman (1907), 131 Wis. 379, 111 N. W. 479; Pelton v. Spider Lake Co., 132 Wis. 219, 112 N. W. 29, 122 Am. St. Rep. 963; Arnd v. Sjoblom (1907), 131 Wis. 642, 111 N. W. 666; Northfield Nat. Bk. v. Arndt (1907), 132 Wis. 383, 112 N. W. 451; Kipp v. Smith, 137 Wis. 234, 118 N. W. 484; Samson v. Ward (1911), 147 Wis. 48, 132 N. W. 629; Green v. Gunsten (1913), 142 N. W. 261.

*Wyoming.*—Holdsworth v. Blyth and Fargo (1915), 146 Pac. 603.

*United States.*—First Nat. Bk. of Shenandoah v. Linver (1911), 187 Fed. 16 (Neb.) 109 U. S. C. C. A. 70; Amalgamated Sugar Co. v. U. S. Nat. Bk. of Portland, Oreg. (1911), 109 C. C. A. 494; Nat. Bk. of Com-

merce in *St. Louis v. Sancho Pag. Co.* (1911), 110 C. C. A. 112, 186 Fed. 257 (La.); *Milton v. Pensacola Bk. & Tr. Co.* (1911), 190 Fed. 126, 111 C. C. A. 166; *Standard Trust Co. v. Commercial Nat. Bk.* (1917), 240 Fed. 303, (C. C. A., 4th Ct.); *Cutler v. Fry* (1917), 240 Fed. 238 (U. S. D. C.); *Worden v. Gillett*, 275 Fed. 654.

**§ 58. When subject to original defenses.** In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.<sup>1 2a</sup>

See text, § 126.

The Illinois act inserts the word "duress" after the word "fraud" and substitutes the words "such holder" for the words "the latter."

In North Dakota the word "holder" is substituted for the word "latter" at the end of the section.

The Wisconsin Act (Sec. 1676-28), inserts after "fraud" "duress" and substitutes for "the latter" "such holder."

Corresponding provision of English Bills of Exchange Act: 29 (3).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Transfers, by party charged with knowledge, after maturity affect the title. *Weil v. Carswell*, 119 Ga. 873, 47 S. E. 217.

"Defenses" construed. *Fox v. Terre Haute Nat. Bank*, — Ind. App. —, 129 N. E. 33.

When former holdings in due course not beneficial to one receiving note from maker. *Builders Lime & Cement Co. v. Weimer*, 170 Iowa 444, 151 N. W. 100, Ann. Cas. 1917C, 1174.

Transferee of holder in due course is also holder in due course. *German-American Nat. Bank v. Kelley*, — Ia. —, 166 N. W. 1053.

Purchaser after maturity of notes procured by fraud are not held in due course unless prior indorser held in due course. *Ford v. Ott*, — Ia. —, 173 N. W. 121.

Transferee after maturity occupies same position, whether transferred by payee or indorser. *Bank of Willard v. Pennsylvania, Etc., Brick Co.* (Ky.), 194 S. W. 110.

Notes assigned after due, subject to original defenses. *Sparr v. Fulton Nat. Bank*, 179 Ky. 755.

One acting as agent of indorsee through fraud cannot recover although he received it from a holder in due course. *Berenson v. Conant*, 214 Mass. 127, 101 N. E. 60.

Bank has burden of showing that it is not subject to original defenses. *First Nat. Bank v. Anderson*, — Minn. —, 175 N. W. 544.

Redelivery of note with old blank indorsement is equivalent to indorsement at the time of redelivery. *Hawkins v. Shields*, 100 Miss. 739, 57 So. 4.

Return of note to hands of party with notice of equities affects all subsequent transfers by him after maturity. *Booher v. Allen*, 153 Mo. 613, 55 S. W. 238.

Donee of note is not charged with equities against the note when the donor was not so charged. *Greer v. Orchards*, 175 Mo. App. 494, 161 S. W. 875.

Purchaser from holder in due course may recover although having knowledge of prior fraud. *McMurry v. McMurry*, 285 Mo. App. 405, 167 S. W. 513.

Indorsee with notice of separate agreement is bound by the agreement. *Farmers & Traders Bank v. Laird*, 188 Mo. App. 322, 175 S. W. 116.

Defendant who signed note for accommodation is not bound if maker violates accommodation agreement and negotiates it for different purpose. *Schlamp v. Manewel* (Mo. App.), 190 S. W. 658.

Payment is good defense against one not holder in due course. *Hoeley v. South Side Bank of St. Louis*, — Mo. —, 217 S. W. 504.

Holder in due course has burden of showing such as against original defenses. *Downs v. Horton*, — Mo. —, 230 S. W. 103.

Burden of proving plaintiff holder in due course or a holder from a holder in due course. *Ensign v. Crandall*, — Mo. App. —, 231 S. W. 675.

Where payee of negotiable note secured by mortgage indorsed it without recourse and assigned mortgage, indorsee had notice of mortgage and was governed by statute relating to mortgages. *Bukler v. Loftres*, 53 Mont. 546, 165 Pac. 601.

Breach of warranty properly pleaded as a defense. *American Seeding Co. v. Slocum*, 58 Misc. Rep. 458, 108 N. Y. Supp. 1042.

Indorsee with knowledge of fraud may transfer it to holder in due course and later purchase the note back relieved of the knowledge. *Horan v. Mason*, 141 App. Div. 89, 125 N. Y. Supp. 668.

Where indorsee's officers were also members of finance committee of payee indorser held to give notice of equities. *Title Guaranty & Trust Co. v. Pam*, 155 N. Y. Supp. 333.

Plaintiff a second transferee from payee of note, indorsed by payee in blank, cannot recover where he received the same after maturity. *Steinberger v. Hittelman*, 93 Misc. Rep. 105, 156 N. Y. Supp. 320.

Transferee of check in bad faith may recover the amount thereof less the amount of the equities. *Lazarowitz v. Stafford*, 167 N. Y. Supp. 910.

Where donor not charged with notice of equities the donee is not. *First Nat. Bk. v. Wood*, 128 N. Y. 35, 27 N. E. 1020.

Holder in due course of note as collateral is not affected by notice of equity before becoming absolute holder thereof. *City Nat. Bank v. Kelly* (Okla.), 151 Pac. 1172.

One with notice is not bettered by selling to a holder in due course and repurchasing. *Hoye v. Kalashian*, 22 R. I. 101, 46 Atl. 271.

Sale to holder in due course and repurchasing does not clear prior knowledge. *Aragon Coffee Co. v. Rogers*, 105 Va. 51, 52 S. E. 843, 8 Ann. Cas. 623.

Where accommodation indorser has no knowledge that proceeds of note are to be used in gambling he may recover. *Citizen's Nat. Bank v. McDannald*, 116 Va. 834, 83 S. E. 389.

Holder in due course, who sold and repurchased after notice of defect, is not affected. *Ratcliffe v. Costello*, 117 Va. 563, 85 S. E. 469.

Sale to holder in due course and repurchase does not destroy equities. *Andrews v. Robertson*, 111 Wis. 334, 87 N. W. 190, 87 Am. St. Rep. 870.

Defenses existing at time of transfer are only ones that affect note. *Marling v. Fitzgerald*, 138 Wis. 93, 120 N. W. 388.

Agent's fraudulent use of moneys received for note negotiated are not corrected by his purchase of note from holder in due course. *Comstock v. Buckley*, 141 Wis. 228, 124 N. W. 414.

Transferee from holder in due course is "holder" although without indorsement. *Smith v. Nelson Land & Cattle Co.*, 212 Fed. Rep. 56, 128 C. C. A. 512.

Effect of equities against note in hands of donee where they do not exist as against donor. *Milne v. Dawson*, 5 Exch. 948.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Stone v. Goldberg & Lewis* (1912), 6 Ala. App. 249, 60 So. 744; *Jones v. Bell* (1917), 77 So. 918.

*Arkansas*.—*Hooten v. State* (1915), 178 S. W. 310; *Dodd v. Axle Nut Sign Co.* (1916), 189 S. W. 663.

*California*.—*Palto Alto & L. Assn. v. First Nat. Bk.* (1917), 164 Pac. 1124.

*Connecticut*.—*Mersick v. Alderman* (1905), 77 Conn. 634, 60 Atl. 109; *Johnson Co. Sav. Bk. v. Walker* (1909), 82 Conn. 24, s. c., 79 Conn. 348, 65 Atl. 1906; 80 Conn. 509, 69 Atl. 15.

*Florida*.—*Tucker v. Fouts* (1917), 76 So. 130.

*Georgia*.—*Weil v. Carswell*, 119 Ga. 873, 47 S. E. 217.

*Illinois*.—*Strauss v. Citizen's St. Bk. of Elmhurst* (1911), 164 Ill. App. 420.

*Indiana*.—*Fox v. Terre Haute Nat. Bank*, 129 N. E. 33.

*Iowa*.—*McKnight v. Parsons* (1907), 136 Iowa 390, 3 N. W. 858, 125 Am. St. 265; *Fullerton Lumber Co. v. Snouffer* (1908), 139 Iowa 176, 117 N. W. 50; *City Nat. Bk. v. Jordan* (1908), 139 Iowa 499, 117 N. W. 578; *Citizen's State Bk. v. Lankin* (1912), 134 N. W. 882; *German-Am. Bk. v. Kelley* (1917), 166 N. W. 1053; *Builders Lime & Cement Co. v. Weimer*, 170 Iowa 444, 151 N. W. 100, Ann. Cas. 1917C, 1174; *German-Am. Nat. Bank v. Kelley*, 166 N. W. 1053; *Ford v. Ott*, 173 N. W. 121,

*Kansas*.—*Underwood v. Fosha* (1913), 89 Kans. 768; *Rodgers v. Slaveno* (1917), 165 Pac. 655; *Stevens v. Keegan* (1918), 172 Pac. 1025.

*Kentucky*.—*Austin v. First Nat. Bk. of Scottsville* (1912), 150 Ky. 113; *Bernard v. Napier* (1916), 181 S. W. 624; *Bk. of Willard v. Pennsylvania & Ky. Firebrick Co.* (1917), 194 S. W. 110; *Ohio Valley Bk. & Tr. Co. v. Gt. Southern Fire Ins. Co.* (1917), 197 S. W. 399; *Sparr v. Fulton Nat. Bk.* (1918), 201 S. W. 310, 179 Ky. 755. Ky. 755.

*Louisiana*.—*Wolf v. Zachary & N. E. R. Co.* (1911), 128 La. 1092, 55 So. 685; *Dicks v. Johnson* (1913), 63 So. 700.

*Maryland.*—Spoerer v. Wehland (1917), 100 Atl. 287; Herman v. Combs (1912), 119 Md. 41, 85 Atl. 1044.

*Massachusetts.*—Symonds v. Riley (1905), 188 Mass. 470, 74 N. E. 926; DeReiset v. Longhery (1910), 205 Mass. 8, 91 N. E. 297; Berenson v. Conant (1913), 214 Mass. 127, 101 N. E. 60.

*Michigan.*—Poss v. Meader (1915), 155 N. W. 425.

*Minnesota.*—Bk. of Willow River v. Pangerl (1917), 165 N. W. 479; First Nat. Bank v. Anderson, 175 N. W. 544.

*Mississippi.*—Hawkins v. Shields, 100 Miss. 739, 57 So. 4;; Adair v. Bank of Hickory Flat (1917), 75 So. 759; Homes Bros. v. McCall (1916), 74 So. 786.

*Missouri.*—McMurry v. McMurry, 285 Mo. App. 405, 167 S. W. 513; Greer v. Orchards, 175 Mo. App. 494, 161 S. W. 875; Booher v. Allen 153 Mo. 613, 55 S. W. 238; Long v. Shafer (1914), 171 S. W. 690; Farmers & Traders Bk. v. Laird (1915), 188 Mo. App. 322, 175 S. W. 116; Morbrose Inv. Co. v. Flick (1915), 174 S. W. 189; Hadley v. Greenville (1916), 187 S. W. 597; Miller v. People's Sav. Bk. (1916), 186 S. W. 547; Schlamp v. Manewel (1916), 190 S. W. 658; Miller v. Chinn (1918), 203 S. W. 212; Hoeley v. South Side, Etc., 217 S. W. 504; Downs v. Horton, — Mo. —, 230 S. W. 103; Ensign v. Crandall, — Mo. App. —, 231 S. W. 675.

*Montana.*—Baker State Bk. v. Grant (1917), 166 Pac. 27; Bukler v. Loftres (1917), 53 Mont. 546, 165 Pac. 601.

*Nebraska.*—Ostenberg v. Kavka (1914), 145 N. W. 713.

*New York.*—First Nat. Bank v. Wood, 128 N. Y. 35, 27 N. E. 1020; M. Groh's Sons Co. v. Schneider (1901), 34 Misc. 195, 68 N. Y. Supp. 682; Jennings v. Carlucci (1904), 87 N. Y. Supp. 475; Steinberger v. Hittelman, 156 N. Y. Supp. 320, 93 Misc. Rep. 105; Am. Seeding Machine Co. v. Slocum (1907), 108 N. Y. Supp. 1042, 58 Misc. 458; Weiss v. Rieser (1909), 62 Misc. 292, 114 N. Y. Supp. 983; Bruck v. Lambeck (1909), 118 N. Y. Supp. 494; Horan v. Mason (1910), 125 N. Y. Supp. 668, 141 A. D. 89; Royal Bk. of N. Y. v. Reinschreiber (1911), 126 N. Y. Supp. 749; Title Guaranty & Trust Co. v. Pam, 155 N. Y. Supp. 333; Thornton v. Netherlands-Amer. Steam Nav. Co. (1917), 165 N. Y. Supp. 682; Kelso & Co. v. Ellis (1919), 224 N. Y. 528, 121 N. E. 364; Farmers State Bk. of Cologne v. McGrath (1919), 170 N. W. 209; Lazarowitz v. Stafford, 167 N. Y. Supp. 910.

*North Dakota.*—Bank v. Garcean (1912), 22 N. Dak. 576, 134 N. W. 882; McCarty v. Kevveta (1913), 139 N. W. 992.

*Ohio.*—Thompson v. Citizens Nat. Bk. of Adams, N. Y. (1909), 32 O. C. C. 131; Spring Valley Nat. Bk. v. Somers (1910), 21 Ohio Dec. 772.

*Oklahoma.*—City Nat. Bk. v. Kelly (1915), 151 Pac. 1172; Douglass v. Brown (1916), 155 Pac. 887; Curless v. Ruland (1916), 155 Pac. 1182; Deming Investment Co. v. Shannon (1917), 162 Pac. 471.

*Oregon.*—Hull v. Agnus (1911), 60 Ore. 95, 118 Pac. 284.

*Pennsylvania.*—Lindsay v. Dutton (1907), 217 Pac. 148, 66 Atl. 250.

*Rhode Island*.—Hoye v. Kalashian, 22 R. I. 101, 46 Atl. 271.

*South Dakota*.—Muschelwicz v. Tidrick (1918), 167 N. W. 499.

*Texas*.—Landon v. Huston Drug Co. (1916), 190 S. W. 534.

*Virginia*.—Aragon Coffee Co. v. Rogers (1906), 105 Va. 51, 52 S. E. 843, 8 Ann. Cas. 623; Pennington v. Third Nat. Bk. of Columbus, Ga. (1913), 77 S. E. 455; Cit. Nat. Bk. v. McDannald (1914), 116 Va. 834, 83 S. E. 389; Ratcliffe v. Costello, 117 Va. 563, 85 S. E. 469.

*Washington*.—Bradley Engineering & Mfg. Co. v. Heyburn (1910), 56 Wash. 628, 106 Pac. 170; Moyses v. Bell (1911), 62 Wash. 534, 114 Pac. 193; Wells v. Duffy (1912), 69 Wash. 310; Fournier v. Cornish (1913), 133 Pac. 9; Metzger v. Sigall (1914), 145 Pac. 72.

*Wisconsin*.—Andrews v. Robertson (1901), 111 Wis. 324, 87 N. W. 190, 87 Am. St. Rep. 870; Marling v. Fitzgerald (1909), 138 Wis. 93, 120 N. W. 388; Comstock v. Buckley (1910), 141 Wis. 228, 124 N. W. 414.

*United States*.—Wirt v. Stubblefield (1900), 17 A. C. (D. C.) 283; Bryan v. Barr (1903), 21 D. C. App. 190; Amalgamated Sugar Co. v. U. S. Nat. Bk. of Portland, Oreg. (1911), 109 C. C. A. 494; Nat. Bk. of Commerce in St. Louis v. Sancho Pag. Co. (1911), 110 C. C. A. 112, 186 Fed. 257; Smith v. Nelson Land & Cattle Co. (1914), 212 Fed. 56; Cutler v. Fray (1917), 240 Fed. 238; Yates Center Nat. Bk. v. Schaeede (1917), 240 Fed. 240.

§ 59. Who deemed holder in due course. Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course.<sup>1</sup> <sup>1a</sup> But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

See text, § 126.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

After evidence of defense and the proof of plaintiff that he purchased for value before maturity the burden shifts. German-American Nat. Bank v. Lewis, 9 Ala. App. 352, 63 So. 741.

Reply that holder is bona fide purchaser should be made to plea of failure of consideration. Tatum v. Commercial Bank & Trust Co., 185 Ala. 249, 64 So. 561.

Bank alleged to be holder is presumed holder in due course. Davies v. Simpson, — Ala. —, 79 So. 48.

Proof as to holder in due course where fraud shown. Deshazo v. L. & E. Lamar, — Ala. App. —, 85 So. 586.

Holder has burden of proving itself holder in due course of notes. Navajo-Apache Bank & Trust Co. v. Wakefield, — Ariz. —, 180 Pac. 529.



Where maker shows evidences of fraud in inception holder has burden of showing his good faith purchase. *Lentz v. Landers*, — Ariz. —, 185 Pac. 821.

When holder held to have acquired a note in good faith. *Kopperud v. Cookson*, — Cal. App. —, 194 Pac. 748.

When burden of proving himself holder in due course is on indorsee although maker has no defenses. *Parsons v. Utica Cement Co.*, 80 Conn. 58, 66 Atl. 1024.

Uncontradicted evidence of witnesses not shown to have been falsely testifying is sufficient. *Southwest Nat. Bank v. Lindsley*, 29 Idaho 343, 158 Pac. 1082.

Plaintiff must affirmatively show himself holder in due course. *First Nat. Bank of Shenandoah, Iowa, v. Hall*, — Ida. —, 169 Pac. 936.

Proof as to being holder in due course. *Lutz v. Matheny*, 208 Ill. App. 40.

When burden of proof does not rest on holder in due course. *Page v. W. F. Hallam & Co.*, 212 Ill. App. 462.

Defendant has burden of proving fraud in inception of note. *Wells v. Manufacturers' & Merchants' Life Ass'n*, 213 Ill. App. 549.

Burden of showing holder a holder in due course. *Farmers Trust Co. v. Sprowl*, — Ind. App. —, 126 N. E. 81.

In suit by indorsee on notes tainted with fraud in inception the plaintiff has burden of showing good faith. *City Deposit Bank v. Green*, 138 Iowa 156, 115 N. W. 893.

Defendant's showing of fraud places on plaintiff burden of showing due course holding. *Cox v. Cline*, 139 Iowa 128, 117 N. W. 48.

Note payable to A, B and C, abstracted by C and negotiated later, C fraudulently recovers note and returns it. Bona fide purchaser sued A and B, who knew of transaction, held defendants had legal title. *Voss v. Chamberlain*, 139 Iowa 569, 117 N. W. 269.

Defendant should show plaintiff indorsee not innocent purchaser. *Callendar Savings Bank v. Loos*, 142 Iowa 1, 120 N. W. 317.

Plaintiff must show more than the indorsement regular in form. *O'Connor v. Kleiman*, 143 Iowa 435, 121 N. W. 1088.

When fraud shown the burden is on plaintiff to show good faith and becomes a jury question. *Arnd v. Aylesworth*, 145 Iowa 185, 123 N. W. 1000, 29 L. R. A. (N. S.) 638.

Negotiation by payee to prevent defense places burden on indorsee to show himself holder in due course. *Bank of Bushnell v. Buck Bros.*, 161 Iowa 362, 142 N. W. 1004.

Uncontradicted denial of notice of fraud may justify direction of verdict. *Robertson v. Stock Co.*, 164 Iowa 230, 145 N. W. 535.

Defendant has burden of proving equitable defenses. *Steele v. Ingham*, 175 Iowa 653, 155 N. W. 294.

Where no fraud at inception and no fraud in circulation holder is not required to prove self holder in due course. *Biggs v. Carter (Iowa)*, 161 N. W. 322.

Transferee as holder in due course from prior holder in due course. *German-American Nat. Bank v. Kelley*, — Iowa —, 166 N. W. 1053.

Proof of acquisition of title as holder in due course. *Illinois State Bank of Chicago v. Boysen*, — Iowa —, 168 N. W. 786.

Holder acquiring title after maturity of note obtained by fraud has burden of showing his predecessor in title a holder in due course. *Ford v. Ott*, — Iowa —, 173 N. W. 121,

Holder must show that he or some one under whom he claims, acquired title in due course. *Rinella v. Faylor*, — Iowa —, 180 N. W. 983.

Effect of set-off or counter-claim against holder in due course. *Stevens v. Keegan*, 103 Kan. 79.

Bad faith is derived from inference of fact and not inference of law. *Gigoux v. Moore*, — Kan. —, 184 Pac. 637.

Plaintiff's showing of purchase for value without notice of infirmity court may direct verdict for him. *Asbury v. Taube*, 151 Ky. 142, 151 S. W. 372.

Transferee after maturity not holder in due course. *Sparr v. Fulton Nat. Bank*, 179 Ky. 755.

Legality of instrument or consideration at inception. *Commercial Sec. Co. v. Archer*, 179 Ky. 842.

Maker must introduce evidence of want of consideration in a suit by one apparently a holder in due course. *Lynchburg Shoe Co. v. Hensley*, — Ky. —, 218 S. W. 243.

Where plaintiff has burden of proving himself holder in due course the jury is not bound to believe plaintiff's witnesses. *Phillips v. Eldridge*, 221 Mass. 103, 108 N. E. 909.

Bank has burden of proving the good faith of its cashier in making purchase. *First Nat. Bank v. Anderson*, — Minn. —, 175 N. W. 544.

Representations of president of bank which were fraudulent affects burden of proof of holder in due course. *State Bank of Rogers v. Missia*, — Minn. —, 175 N. W. 614.

In suit to recover back money paid on forged note the burden is upon defendant to show himself holder in due course. *Jones v. Miners' & Merchants' Bank*, 144 Mo. App. 428, 128 S. W. 829.

Proof of failure of consideration does not put burden of proving himself holder in due course upon plaintiff. *Bank of Polk v. Wood*, 189 Mo. App. 117, 173 S. W. 1093.

Defense of fraud must be pleaded and proven. *German-American Bank v. Barnes* (Mo. App.), 185 S. W. 1194.

When pleadings do not show plaintiff innocent purchaser. *Stannard v. Orleans Flour Co.*, 93 Neb. 389, 140 N. W. 636.

When burden of proof of being holder in due course shifts to holder. *Stevens v. Weinberg*, — Mo. App. —, 201 S. W. 603.

Burden of showing himself holder in due course is upon a subsequent holder of fraudulently executed note. *Mechanics Savings Bank v. Feeney*, — N. H. —, 108 Atl. 295.

Indorsee has burden of showing no notice that corporation could not enforce instrument. *Ensign v. Christiansen*, — N. H. —, 109 Atl. 857.

Proof of lack of consideration between immediate parties does not affect presumption as to indorsee being holder in due course. *Mitchell v. Baldwin*, 88 App. Div. 265 84 N. Y. Supp. 1043.

Giving of value before maturity not proof of good faith. *Natl. Bank v. Foley*, 54 Misc. Rep. 126, 103 N. Y. Supp. 553.

When introduction of note and indorsements thereon sufficient. *Beck v. Maller*, 131 App. Div. 243, 115 N. Y. Supp. 596.

Where no evidence offered of plaintiff indorsee's knowledge of fraud it is error to direct verdict. *Barbieri v. Casazza*, 115 N. Y. Supp. 1074.

Testimony of plaintiff that he purchased for value before maturity is not contradicted by evidence of fraud without further showing of knowledge. *Eisenberg v. Lefkovitz*, 142 App. Div. 569, 127 N. Y. Supp. 595.

Indorsee having shown transfer of note for adequate consideration evidence that original delivery was for secret preference is not admissible. *Bass v. Goldstein*, 83 Misc. Rep. 412, 145 N. Y. Supp. 38.

When plaintiff proves prima facie case as holder in due course the burden shifts to defendant. *Title Guarantee & Trust Co. v. Pam*, 155 N. Y. Supp. 333.

Showing plaintiff or one prior indorser a holder in due course is sufficient. *A. E. McBee Co. v. Shoemaker*, 174 App. Div. 291, 160 N. Y. Supp. 251.

Accommodation note obtained from accommodating party by fraud of payee is affected by this section. *Kennedy v. Spilka*, 72 Misc. Rep. 89, 129 N. Y. 390.

Fraud must be against maker to change burden of proof. *Fulton Bank v. Phenix Bank*, 1 (N. Y.) Hall 562.

Circumstances which show bad faith may prevent one being holder in due course. *Vogel v. Pyne*, 189 N. Y. Supp. 285.

Defense of lack of consideration is not excluded by failure of answer to deny that plaintiff is holder in due course. *Bank of Coney Island v. Wunberg*, 190 N. Y. Supp. 203.

Purchaser for value from holder of defective title must show his good faith. *Singer Mfg. Co. v. Summers*, 143 N. C. 102, 55 S. E. 522.

Instruction that prima facie case of plaintiff is restored is erroneous as assuming truth of evidence. *American Nat. Bank v. Fountain*, 148 N. C. 590, 62 S. E. 738.

Burden on defendant to show not only infirmity in paper but plaintiff's knowledge also. *First Nat. Bank of Fountain v. Brown*, 160 N. C. 23, 75 S. E. 1086.

Qualified instruction as to holder's being prima facie holder in due course is erroneous. *Standard Trust Co. v. Commercial Nat. Bank*, 167 N. C. 260, 83 S. E. 474.

When presumption that one is holder in due course not rebutted by denial in answer of ownership. *Gulf States Steel Co. v. Ford* (N. C.), 91 S. E. 844.

Transferee may testify as to his good or bad faith after an attack thereon. *Smathers v. Toxaway Hotel Co.*, 167 N. C. 468.

When plaintiff not required to prove himself holder in due course. *Moon v. Simpson*, 170 N. C. 335, 87 S. E. 118.

Defendant must offer evidence of defense to entitle him to judgment although jury believe plaintiff not holder in due course. *Raleigh Banking & Trust Co. v. Clark* (N. C.), 90 S. E. 200.

Where payer's title not shown defective defendant must overthrow prima facie presumption of holder in due course. *Commercial Security Co. v. Jack*, 29 N. D. 67, 150 N. W. 460.

Error to direct verdict for plaintiff when evidence tending to establish defense introduced. *First Nat. Bank v. Carroll*, — N. D. —, 179 N. W. 664.

Maker must deny allegations in complaint that indorsee is holder in due course if he would avail himself of plea of knowledge of equity by plaintiff. *Brown v. Feldwert*, 46 Ore. 363, 80 Pac. 414.

Holder of defective title to note must show he acquired under holder in due course. *State v. Emery*, — Okla. —, 174 Pac. 770.

Taking one of series of notes after part are due as notice of defective title affecting holder in due course. *LeRoy v. Meadows*, — Okla. —, 200 Pac. 858.

Who are holders in due course. *Hill v. McCrow*, 88 Ore. 299.

Not error to permit case to go to jury upon uncontradicted evidence of bank cashier. *Second Nat. Bank v. Hoffman*, 229 Pa. 429, 78 Atl. 1002.

When uncontradictedly shown by cashier, maker and another witness that bank had no knowledge of fraud, it is error to permit case to go to jury. *Second Nat. Bank v. Hoffman*, 233 Pa. 390, 82 Atl. 463.

Burden of proof does not shift only the burden of proceeding where defendant does not introduce contradicting evidence. *Leavitt v. Thurston*, 38 Utah 351, 113 Pac. 77.

Undisputed evidence showing plaintiff holder in due course controls where erroneous instruction as to burden of proof given. *Miller v. Marks*, 46 Utah 257, 148 Pac. 412.

Pledgee as holder in due course. *Interstate Trust Co. v. Headlund*, — Utah —, 171 Pac. 515.

Transferee before maturity for value presumed holder in due course. *City Savings & Trust Co. v. Peck*, — Vt. —, 103 Atl. 1020.

Circumstances which do not show knowledge of defects. *Duncan v. Carson*, — Va. —, 103 S. E. 665.

Defendant entitled to verdict if no evidence of good faith given to offset evidence of fraud. *Gottstein v. Simmons*, 59 Wash. 178, 109 Pac. 596.

Transfer of note before maturity and before time for performance of consideration does not put burden upon indorsee after maturity. *Moyses v. Bell*, 62 Wash. 534, 114 Pac. 193.

When reasonable minds would not differ as to effect of uncontradicted evidence verdict may be directed. *McLaughlin v. Dopps*, 84 Wash. 422, 147 Pac. 6.

Where reasonable men might differ because of character of plaintiff's testimony it is for the jury to determine question of holder in due course. *Rohweder v. Titus*, 85 Wash. 441, 148 Pac. 583.

Holder's testimony alone may be sufficient. *Fisk Rubber Co. of New York v. Pinkey*, — Wash. —, 170 Pac. 581.

Holder deemed prima facie to be good faith holder. *Larsen v. Betcher*, — Wash. —, 195 Pac. 27.

Evidence of making note and indorsement makes prima facie case for plaintiff against pleas that plaintiff is not holder in due course. *Holds-worth v. Anderson Drug Co. (W. Va.)*, 87 S. E. 565.

Burden of showing plaintiff holder in due course. *Jones v. Brandt*, — Wis. —, 181 N. W. 813.

In Federal Court the burden of proving fraud or bad faith is on defendant. *Young v. Lowry*, 192 Fed. Rep. 825, 113 C. C. A. 149.

Instruction as to burden of proof being on plaintiff must also state that this is after showing of negotiation in fraud. *Crosby v. Reynolds*, 196 Fed. Rep. 640, 116 C. C. A. 314.

Proof of fraud compels holder to prove payment of value in good faith without notice. *Tatam v. Haslar*, 23 Q. B. D. 345.

Payee does not have burden of proving lack of knowledge of duress by husband to compel wife to make note. *Talbot v. Van Boris (1911)*, 1 K. B. 854.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Bledsoe v. City Nat. Bk. of Selma (1912)*, 7 Ala. App. 195, 60 So. 942; *Bruce v. Citizen's Nat. Bk. of Lineville (1913)*, 63 So. 82; *Ger.-Am. Nat. Bk. v. Lewis (1913)*, 63 So. 741; *Tatum v. Commercial Bk. & Tr. Co. (1914)*, 64 So. 561; *Ger.-Am. Nat. Bk. v. Lewis (1913)*, 9

*Ala.* App. 352; *Hudson v. Repton State Bk.* (1917), 75 So. 695; *Davies v. Simpson* (1918), 79 So. 48; *Miller v. Johnson*, 189 Ala. 354, 357; *Elmore Bank v. Avant*, 189 Ala. 418, 66 So. 509; *Deshazo v. L. & E. Lamar*, 85 So. 586.

*Arizona*.—*Navajo, Etc., v. Wakefield*, 180 Pac. 529; *Lentz v. Landers*, 185 Pac. 821.

*Arkansas*.—*Pinson v. Cobb* (1914), 166 S. W. 943; *Keathley v. Holland Banking Co.* (1914), 166 S. W. 953; *Williamson v. Miles* (1914), 169 S. W. 368; *Finney v. Rollins* (1917), 192 S. W. 210.

*California*.—*Burns v. Bauer* (1918), 174 Pac. 346; *Kopperud v. Cookson*, 194 Pac. 748.

*Colorado*.—*Johnson Co. Sav. Bk. v. Gregg* (1911), 51 Colo. 358, 117 Pac. 1003; *First Nat. Bk. of Iowa City v. Smith* (1913), 136 Pac. 460; *Irvine v. Minshull* (1915), 152 Pac. 1150.

*Connecticut*.—*Parsons v. Utica Cement Mfg. Co.* (1907), 80 Conn. 58, 66 Atl. 1024, 82 Conn. 333, 73 Atl. 785; *Johnson Co. Sav. Bk. v. Walker* (1909), 82 Conn. 24; s. c., 79 Conn. 348, 65 Atl. 132 (1906), 80 Conn. 509, 69 Atl. 15; *Harris v. Johnson* (1915), 93 Atl. 126; *New Haven Nat. Banking Assn. v. Jordan* (1918), 104 Atl. 392.

*Florida*.—*Berryhill-Cromatic Co. v. Manitowoc Shipbuilding & Dry Dock Co.* (1913), 63 So. 720; *Bass v. Lee* (1917), 74 So. 7.

*Idaho*.—*Winter v. Nobs* (1910), 19 Ida. 18, 112 Pac. 525; *Park v. Johnson* (1911), 20 Ida. 548, 119 Pac. 52; *Shellenberger v. Nourse* (1911), 20 Ida. 323, 118 Pac. 508; *Brown v. Miller* (1912), 22 Ida. 307, 125 Pac. 981; *Altschul v. Rogers* (1912), 63 Ida. 512, 126 Pac. 1048; *Southwest Nat. Bank v. Lindsley*, 29 Ida. 343, 158 Pac. 1082; *First Nat. Bank of Shenandoah, Iowa, v. Hall*, 169 Pac. 936.

*Illinois*.—*Peterson v. Emery* (1910), 154 Ill. App. 294; *Stitzel v. Miller* (1910), 157 Ill. App. 401; *Black v. Downes* (1912), 176 Ill. App. 358; *Richter v. Burdock* (1913), 257 Ill. 410, 100 N. E. 1063; *Christina v. Cuseniano* (1912), 129 Ill. 873, 57 So. 157; *McClory v. Towne* (1912), 173 Ill. App. 113; *Weir & Craig Mfg. Co. v. Bonus* (1913), 177 Ill. App. 626; *Justice v. Stonecipher* (1915), 108 N. E. 722, 267 Ill. 448; *Lutz v. Matheny*, 208 Ill. App. 40; *Page v. W. F. Hallam & Co.* 212 Ill. App. 462; *Wells v. Manufacturers' & Merchants' Life Assn.*, 213 Ill. App. 599.

*Indiana*.—*Bright Nat. Bk. of Flora v. Hartman* (1915), 109 N. E. 846; *Boxell v. Bright Nat. Bk.* (1916), 112 N. E. 3; *Farmers' Trust Co. v. Sprowl*, 126 N. E. 81.

*Iowa*.—*Keegan v. Rock* (1905), 128 Iowa 39, 102 N. W. 805; *Vander Ploey v. Van Zunk* (1907), 135 Iowa 350, 112 N. W. 807; *McKnight v. Parsons* (1907), 136 Iowa 390, 113 N. W. 858, 125 Am. St. 365; *Hawkins v. Young* (1908), 114 N. W. 1041; *City Dept. Bk. v. Green* (1908), 138 Iowa 156, 115 N. W. 893; *Cox v. Cline* (1908), 139 Iowa 128, 117 N. W. 48; *Voss v. Chamberlain*, 139 Iowa 569, 117 N. W. 269; *City Nat. Bk. v. Jordan* (1908), 139 Iowa 499, 117 N. W. 578; *Callendar Savs. Bank v. Loos*, 142 Iowa 1, 120 N. W. 317; *O'Connor v. Kleiman* (1909), 143 Iowa 435, 121 N. W. 1088; *Iowa Nat. Bk. v. Carter* (1909), 144 Iowa 715, 123 N. W. 237; *Arnd v. Aylesworth* (1909), 145 Iowa 185, 123 N. W.

1000, 29 L. R. A. (N. S.) 638; *Kushner v. Abbott* (1912), 137 N. W. 913; *Bank of Bushnell v. Buck Bros.* (1913), 161 Iowa 362, 142 N. W. 1004; *LeClere v. Philpott* (1915), 151 N. W. 825; *Robertson v. United States Live Stock Co.* (1914), 164 Iowa 230, 145 N. W. 535; *Stotts v. Fawfield* (1914), 145 N. W. 61; *Biggs v. Carter* (1917), 161 N. W. 322; *State v. Wegener* (1917), 162 N. W. 1040; *German-Am. Bk. v. Kelley* (1918), 166 N. W. 1053; *Limdeau v. Hamilton* (1918), 169 N. W. 208; *Steele v. Ingraham*, 175 Iowa 653, 155 N. W. 294; *German-American Nat. Bank v. Kelley*, 166 N. W. 1053; *Illinois State Bank of Chicago v. Boysen*, 168 N. W. 786; *Ford v. Ott*, 173 N. W. 525; *Rinella v. Faylor*, 180 N. W. 983.

*Kansas*.—*Abemeyer v. First Nat. Bk. of Horton* (1907), 76 Kans. 877, 92 Pac. 1109; *Underwood v. Quantie* (1911), 116 Pac. 361; *Murchison v. Nies* (1912), 87 Kans. 77; *The Stock Ex. Bk. v. Wykes* (1913), 88 Kans. 750; *Ireland v. Shore* (1914), 137 Pac. 926; *Nat. Bk. v. Lyons Exchange Bk.* (1917), 164 Pac. 137; *Security State Bk. of Wichita v. Seannier* (1919), 178 Pac. 239; *Stevens v. Keegan*, 103 Kans. 79; *Gigout v. Moore*, 18 Pac. 637.

*Kentucky*.—*Wilkins v. Usher* (1906), 123 Ky. 696, 97 S. W. 37; *Citizens Bk. v. Bk. of Waddy* (1907), 126 Ky. 169, 103 S. W. 249; *Callaghan v. Louisville Dry Goods Co.* (1910), 14 Ky. 712, 131 S. W. 995; *Campbell v. Fourth Nat. Bk. of Cincinnati* (1900), 137 Ky. 555, 126 S. W. 114; *Asbury v. Taube* (1912), 151 Ky. 142, 151 S. W. 372; *Muir v. Edelen* (1913), 160 S. W. 1048; *Harrison v. Ford* (1914), 165 S. W. 663; *Pratt v. Rounds* (1914), 169 S. W. 848; *Bernard v. Mapier* (1916), 181 S. W. 624; *Mackenzie v. Eschman's Exrs.* (1917), 192 S. W. 521; *Commercial Sec. Co. v. Archer* (1918), 179 Ky. 842, 201 S. W. 479; *Sparr v. Fulton Nat. Bank*, 179 Ky. 755; *Lynchburg Shoe Co. v. Hensley*, 218 S. W. 243.

*Maryland*.—*Arnd v. Heckert* (1908), 108 Md. 300, 70 Atl. 417; *Weant v. Southern Tr. & Dep. Co.* (1910), 112 Md. 463, 77 Atl. 289; *Stouffer v. Alford* (1910), 114 Md. 110, 78 Atl. 387; *Wilson v. Kelso* (1911), 115 Md. 62, 80 Atl. 895.

*Massachusetts*.—*Savage v. Goldsmith* (1902), 181 Mass. 420; *Register's Sons & Co. v. Reed* (1904), 185 Mass. 226, 70 N. E. 53; *Bass v. Inhabitants of Wellesley* (1906), 192 Mass. 526; *Feigenspan v. McDonald* (1909), 201 Mass. 341, 87 N. E. 624; *Berenson v. Conant* (1913), 214 Mass. 127, 101 N. E. 60; *Lewiston Trust & Safe Dep. Co. v. Shackford* (1913), 213 Mass. 432; *Munroe v. Stanley* (1915), 107 N. E. 1012; *Nat. Inv. & Security Co. v. Cirey* (1916), 111 N. E. 357; *Colonial Fur Ranching Co. v. First Nat. Bk.* (1917), 116 N. E. 731; *Phillips v. Eldridge*, 221 Mass. 103, 108 N. E. 909.

*Michigan*.—*Gen. Conf. Assn. etc. v. Mich. Sanitarium* (1911), 166 Mich. 504; *Merchants Nat. Bk. v. Wadsworth* (1911), 166 Mich. 528, 131 N. W. 1108; *Hakes v. Thayer* (1911), 131 N. W. 174; *Poss v. Meader* (1915), 155 N. W. 425; *Van Slyke v. Rooks* (1914), 147 N. W. 579.

*Minnesota*.—*Ger.-Am. Bk. of Ritzville v. Lyons* (1914), 149 N. W. 658; *Stevens v. Pearson* (1917), 163 N. W. 770; *Rosenstein v. Berman*, 116 Minn. 231, 133 N. W. 792; *First Nat. Bank v. Anderson*, 175 N. W. 544; *State Bank of Rogers v. Missia*, 175 N. W. 614.

*Missouri*.—Burchett v. Fink (1909), 139 Mo. App. 381; Jobes v. Wilson, 140 Mo. App. 281, 124 S. W. 548; State Nat. Bk. of Shawnee v. Levy (1910), 141 Mo. App. 288; Johnson Co. Sav. Bk. v. Redfearn (1910), 141 Mo. App. 386; Bk. of Ozark v. Hanks (1910), 142 Mo. App. 110, 125 S. W. 221; Reeves v. Litts (1910), 143 Mo. App. 196, 128 S. W. 246; Johnson Co. Sav. Bk. v. Mills (1910), 143 Mo. App. 265, 127 S. W. 425; Bk. of Ozark v. Tuttle (1910), 144 Mo. App. 294; Settles v. Moore & Scobee (1910), 149 Mo. App. 724; Jones v. Miner's & Merchants Bk. (1910), 144 Mo. App. 428, 128 S. W. 829; Link v. Jackson (1911), 158 Mo. App. 63, 139 S. W. 588, s. c. 164 Mo. App. 195, 147 S. W. 1114; Birch Tree State Bk. v. Dowler (1912), 163 Mo. 65, 145 S. W. 843; Hill v. Dillon (1913), 161 S. W. 881; State Bk. of Freeport v. Cape Girardeau & C. R. Co. (1913), 155 S. W. 1111; Nance v. Hayward (1914), 170 S. W. 429; Wade v. Boone (1914), 168 S. W. 360; Wing v. Un. Cent. Life Ins. Co. (1914), 168 S. W. 917; Bank of Polk v. Wood (1915), 173 S. W. 1093; Chandler v. Hedrick (1915), 173 S. W. 93; Farmers & Merchants Bk. v. Munson (1915), 177 S. W. 778; German-American Bank v. Barnes (Mo. App.), 185 S. W. 1194; Engles v. Williams (1918), 203 S. W. 671; Bank of Polk v. Wood, 189 Mo. App. 62, 173 S. W. 1093; Hill v. Dillon, 176 Mo. App. 192, 161 S. W. 881; Stevens v. Weinberg, 201 S. W. 603.

*Montana*.—State Bk. of Moore v. Forsythe (1910), 41 Mont. 249; N. W. Improvement Co. v. Rhoades (1916), 158 Pac. 832; Citizen's State Bk. of Roundup v. Smelling (1919), 178 Pac. 744.

*Nebraska*.—Bolew v. Wright (1911), 89 Neb. 116, 131 N. W. 185; Central Nat. Bk. v. Ericson (1912), 92 Neb. 396, 138 N. W. 563; Stannard v. Orleans Flour Co., 93 Neb. 389, 140 N. W. 636; Ostenberg v. Kavka (1914), 145 N. W. 713; Marshall v. Kirschbaum (1917), 161 N. W. 577; Douglass v. Burton (Neb.), 154 N. W. 718.

*New Hampshire*.—Mechanics Savings Bank v. Feeney, 108 Atl. 295; Ensign v. Christianson, 109 Atl. 857.

*New Jersey*.—Louis DeJonge & Co. v. Woodport Hotel & Land Co. (1909), 77 N. J. L. 233, 72 Atl. 439.

*New Mexico*.—Gibby v. Carrillo (1919), 177 Pac. 894.

*New York*.—Lucker v. Iba (1900), 54 A. D. 566, 66 N. Y. Supp. 1019; Cahen v. Everitt (1901), 67 A. D. 86; Sutherland v. Mead (1903), 80 A. D. 103, 80 N. Y. Supp. 504; Karsch v. Pottier & Stymers Mfg. & Importing Co. (1903), 81 N. Y. 782, 82 A. D. 230 Mitchell v. Baldwin (1903), 88 A. D. 265, 84 N. Y. Supp. 1043; Packard v. Windholz (1903), 40 Misc. 347, affirmed 88 A. D. 365; Benedict v. Kress (1904), 89 N. Y. Supp. 607; Consolidated Nat. Bk. v. Kirkland (1904), 99 A. D. 121, 91 N. Y. Supp. 353; Engle v. Hyman (1907), 104 N. Y. Supp. 390, 54 Misc. 251; Colborn v. Arbreen (1907), 54 Misc. 623, 104 N. Y. Supp. 968; Nat. Bk. of Barre v. Foley (1907), 54 Misc. 126, 103 N. Y. Supp. 553; Siegel v. Oehl (1908), 110 N. Y. Supp. 916; Strauss v. St. Louis Co. Bk. (1908), 126 A. D. 647; Joveshof v. Rockey, 109 N. Y. Supp. 818, 58 Misc. Rep. 559; Packard v. Figlinolo (1909), 114 N. Y. Supp. 753; Barberi v. Casazza, 115 N. Y. Supp. 1074; Beck v. Maller (1909), 115 N. Y. Supp. 596, 131 A. D. 243; Becker v. Hart (1909), 120 N. Y. Supp. 270; Republic Life Ins. Co. v. Hudson Trust Co. (1909), 130 A. D. 618; Manufactur-

er's Commercial Co. v. Blitz (1909), 131 A. D. 17, 115 N. Y. Supp. 402; Midwood Park Co. v. Baker (1910), 128 N. Y. Supp. 954; Burst v. Lee (1911), 143 A. D. 614, 127 N. Y. Supp. 1040; Kennedy v. Spilka (1911), 129 N. Y. Supp. 390; Eisenberg v. Lefkowitz (1911), 127 N. Y. Supp. 595, 142 A. D. 569; Bass v. Goldstein (1913), 83 Misc. 412, 145 N. Y. Supp. 38; Laing v. Hudgens (1913), 143 N. Y. Supp. 763, 82 Misc. 388; Nat. Discount Co. v. William R. Jenkins Co. (1913), 143 N. Y. Supp. 996; Spencer & Co. v. Brown (1913), 143 N. Y. Supp. 994; Waxberg v. Stappler (1913), 83 Misc. 78, 144 N. Y. Supp. 608; Cleary v. Dykeman (1914), 146 N. Y. Supp. 611; Peterson v. Alton (1914), 147 N. Y. Supp. 280; Zivendling v. Kitrosser (1914), 148 N. Y. Supp. 99; Interboro Brewing Co. v. Doyle (1915), 151 N. Y. Supp. 325; Ecks v. Montanara (1915), 152 N. Y. Supp. 1010; Title Guarantee & Tr. Co. v. Pam, 155 N. Y. Supp. 333, 339; Mech. & Metals Nat. Bk. v. Termini (1915), 156 N. Y. Supp. 433; A. E. McBee Co. v. Shoemaker, 160 N. Y. Supp. 251, 174 A. D. 291; Anchor Realty Co. v. Bankers Trust Co. (1916), 161 N. Y. Supp. 300; Jarone v. Russo-Iodice Realty Co. (1917), 164 N. Y. Supp. 135; Monk v. 23d Ward Bank (1917), 165 N. Y. Supp. 1055; Thornton v. Netherlands Steam Nav. Co. (1917), 165 N. Y. Supp. 682; Kuflik v. Vaccaro (1918), 170 N. Y. Supp. 13; Martindale v. DeKay (1918), 166 N. Y. Supp. 405; Korn v. Davis (1919), 172 N. Y. Supp. 440; Robert G. Thomas Co. v. Zeiter (1918), 171 N. Y. Supp. 244; Vogel v. Pyne, 189 N. Y. Supp. 285; Bank of Coney Island v. Weinberg, 190 N. Y. Supp. 203.

*North Carolina.*—Mayers v. McRimmon (1906), 140 N. Car. 640, 53 S. E. 447, 111 Am. St. 879; Singer Mfg. Co. v. Summers (1906), 143 N. Car. 102, 55 S. E. 522; Am. Nat. Bk. v. Fountain (1908), 62 S. E. 738, 148 N. Car. 590; Murchison Nat. Bk. v. Dunn Oil Mills Co. (1909), 150 N. Car. 718 64 S. E., 885; Johnston Co. Sav. Bk. v. Chase (1909), 151 N. Car. 108; First Nat. Bk. of Kansas City v. Griffin (1910), 153 N. Car. 72; Myers v. Petty (1910), 153 N. Car. 462; Chadwick v. Kirkman (1912), 159 N. Car. 259, 74 S. E. 968; First Nat. Bk. of Lumberton v. Brown (1912), 160 N. Car. 23; Fidelity Trust Co. v. Ellen (1913), 79 S. E. 263; Standing Stone Nat. Bk. v. Walser (1913), 162 N. Car. 53, 77 S. E. 1006; Vaughan v. Exam. (1913), 161 N. Car. 492, 77 S. E. 679; Smathers v. Toxaway Hotel Co., 167 N. Car. 468; Third Nat. Bk. of St. Louis v. Exam. (1913), 79 S. E. 498; First Nat. Bk. v. Warsaw Drug Co. (1914), 81 S. E. 993; Fidelity Trust Co. v. Whitehead (1914), 80 S. E. 1065; Merchants Nat. Bk. of Indianapolis v. Branson (1914), 81 S. E. 410; Standard Trust Co. v. Commercial Nat. Bank, 167 N. Car. 260, 83 S. E. 474; Raleigh Banking & Tr. Co. v. Clark (1906), 90 S. E. 200; Gulf States Steel Co. v. Ford (1917), 91 S. E. 844; Metropolitan Discount Co. v. Becker (1919), 97 S. E. 495.

*North Dakota.*—Drenkall v. Movins State Bk. (1911), 118 N. Dak. 10, 88 N. W. 724; Tamlyn v. Peterson (1906), 15 N. Dak. 488, 107 N. W. 1081; Kerr v. Anderson (1907), 16 N. Dak. 36, 111 N. W. 614; McCarty v. Kepweta (1913), 139 N. W. 992; Farmer's Bank of Mercer Co. v. Riedlinger (1914), 146 N. W. 556; Northern Savings Bk. v. Kelly (1915), 154 N. W. 650; Commercial Security Co. v. Jack, 29 N. Dak. 67, 150 N. W. 460; First Nat. Bank v. Carroll, 179 N. W. 664.

*Ohio.*—Wehrman v. Beech (1906), 28 O. C. C. 128; Carrara Paint Agency Co. v. Nat. Bk. of Barberton (1906), 29 O. C. C. 485; Thompson



v. Citizens Nat. Bk. of Adams (1909), 32 O. C. C. 131; Spring Valley Nat. Bk. v. Somers (1910), 21 Ohio Dec. 772; Hamilton Mach. Tool Co. v. Memphis Nat. Bk. (1911), 84 Ohio St. 184, 95 N. E. 777.

*Oklahoma.*—Wood v. Stickle (1912), 128 Pac. 1082; Hudson v. Moore (1913), 130 Pac. 774; Jones v. Citizen's State Bk. (1913), 135 Pac. 373; Western Ex. Bk. of Kansas City v. Coleman (1913), 132 Pac. 488; Gourley v. Pioneer Loan Co. (1915), 151 Pac. 1072; Waldo v. Winkler (1915), 152 Pac. 99; Barry v. Kniseley (1916), 155 Pac. 1168; Pittsburg Mfg. Inst. Co. v. Robins (1916), 158 Pac. 929; Mangold & Glandt Bk. v. Uterback (1918), 174 Pac. 542; State v. Emery, 174 Pac. 770; LeRoy v. Meadows, — Okla. —, 200 Pac. 858.

*Oregon.*—Brown v. Feldwert (1905), 46 Ore. 363, 80 Pac. 414; Everding & Farrell v. Taft (1916), 160 Pac. 1160; Hill v. McCrow, 88 Ore. 299.

*Pennsylvania.*—Kensington Nat. Bk. v. Ware (1906), 32 Pa. Super. Ct. 247; Hatboro Nat. Bk. v. Stevenson (1907), 33 Pa. Super. Ct. 144; Stouffer v. Kelchner (1908), 38 Pa. Super. Ct. 475; Lowry Nat. Bk. v. Hazard (1909), 223 Pa. 520; Schultheis v. Sellers (1909), 223 Pa. 506, 72 Atl. 887; Grange Trust Co. v. Brown (1911), 49 Pa. Super. Ct. 274; Second Nat. Bk. of Pittsburg v. Hoffman (1911), 229 Pa. Super. Ct. 429, 78 Atl. 1002; First Nat. Bk. of Bangor v. Paff (1913), 87 Atl. 841; Levy v. Gilligan (1914), 90 Atl. 647; Second Nat. Bank v. Hoffman, 233 Pa. 390, 82 Atl. 463.

*Rhode Island.*—Cook v. Am. Tubing & Webbing Co. (1906), 28 R. I. 41, 65 Atl. 641.

*South Dakota.*—Barnard v. Tidrick (1915), 152 N. W. 690; Peterson v. Hoftiezer (1915), 150 N. W. 934; Shade v. Barnes Bros. (1915), 151 N. W. 42.

*Texas.*—Tuke v. Feagin (1915), 181 S. W. 805.

*Utah.*—Cole Banking Co. v. Sinclair, 34 Utah 454, 98 Pac. 411; Warren v. Smith (1909), 35 Utah 455, 100 Pac. 1069; McCormick v. Swem (1909), 36 Utah 6, 102 Pac. 626; Miller v. Marks (1915), 46 Utah 257, 148 Pac. 412; Leavitt v. Thurston, 38 Utah 351, 113 Pac. 77; Interstate Trust Co. v. Headlund, 171 Pac. 515.

*Vermont.*—City Sav. & Trust Co. v. Peck (1918), 103 Atl. 1020.

*Virginia.*—Aragon Coffee Co. v. Rogers (1906), 105 Va. 51; Hawse v. First Nat. Bk. of Piedmont, W. Va. (1912), 113 Va. 588; Miller v. Norton & Smith (1913), 77 S. E. 452; Duncan v. Carson, 103 S. E. 665.

*Washington.*—Keene v. Behan (1905), 40 Wash. 505, 82 Pac. 884; Gosline v. Dryfoos (1907), 45 Wash. 396, 88 Pac. 634; Ireland v. Scharpenburg (1909), 54 Wash. 558, 103 Pac. 801; Bradley Engineering & Mfg. Co. v. Heyburn (1913), 56 Wash. 628, 106 Pac. 170; Cedar Rapids Nat. Bk. v. Myhre (1910), 57 Wash. 596, 107 Pac. 518; Gottstein v. Simmons (1910), 59 Wash. 178, 109 Pac. 596; City Nat. Bk. of Lafayette v. Mason (1911), 58 Wash. 492, 108 Pac. 107; Moyses v. Bell (1911), 62 Wash. 534, 114 Pac. 193; Scandinavian Am. Bk. v. Johnston (1911), 63 Wash. 187, 115 Pac. 102; Wells v. Duffy (1912), 69 Wash. 310; Fournier v. Cornish (1913), 133 Pac. 9; Union Inv. Co. v. Rosenzweig (1914), 139 Pac. 874;

McLaughlin v. Dopps (1915), 84 Wash. 422, 147 Pac. 6; City Nat. Bk. of Shelton Elec. Co. (1917), 164 Pac. 993; Rohweder v. Titus, 85 Wash. 441, 148 Pac. 583; Fisk Rubber Co. v. Pinkey, 170 Pac. 581; Larsen v. Betcher, 195 Pac. 27.

*West Virginia.*—Interstate Finance Co. v. Schroder (1914), 81 S. E. 552; Holdsworth v. Anderson Drug Co. (W. Va.), 87 S. E. 565.

*Wisconsin.*—Kinney v. Kruse, 28 Wis. 183; Hodge v. Smith (1907), 130 Wis. 326, 110 N. W. 192; Pelton v. Spider Lake S. & I. L. Co. (1907), 132 Wis. 219, 112 N. W. 29, 122 Am. St. 963; Northfield Nat. Bk. v. Arndt (1907), 132 Wis. 383, 112 N. W. 451; Shaffer v. Peavey (1915), 152 N. W. 829; Jones v. Brandt, 181 N. W. 813.

*Wyoming.*—Acme Coal Co. v. Northrup Nat. Bk. of Iola (1915), 146 Pac. 593; Holdsworth v. Blyth & Fargo (1915), 146 Pac. 603; Capitol Hill St. Bk. v. Rawlings Nat. Bk. (1916), 160 Pac. 1171.

*United States.*—Bryan v. Barr (1903), 21 D. C. App. 190; Johnson Co. Sav. Bk. v. Mendell (1911), 36 A. C. (D. C.) 413; Thompson v. Franklin Nat. Bk. (1917), 45 D. C. App. 218; First Nat. Bk. of Shendoah v. Linver (1911), 187 Fed. 16, 109 U. S. C. C. A. 70; Nat. Bk. of Com. in St. Louis v. Sanchol Pag. Co. (1911), 110 C. C. A. 112, 106 Fed. 257; In re Hill (1911), 187 Fed. 214; Young v. Lowry, 192 Fed. Rep. 825, 113 C. C. A. 149; Amalgamated Sugar Co. v. U. S. Nat. Bk. of Portland, Oreg. (1911), 109 C. C. A. 494; Crosly v. Reynolds, 196 Fed. Rep. 640, 116 C. C. A. 314; Mills v. Keep (1912), 197 Fed. 360; Washington, Etc. Ry. Co. v. Murray, 211 Fed. Rep. 440, 128 C. C. A. 112.

## ARTICLE V.

### LIABILITY OF PARTIES.

§ 60. Liability of maker.	§ 66. Liability of general indorsers.
61. Liability of drawer.	
62. Liability of acceptor.	67. Liability of indorser where paper negotiable by delivery.
63. When person deemed indorser.	68. Order in which indorsers are liable.
64. Liability of irregular indorser.	69. Liability of agent or broker.
65. Warranty; where negotiation by delivery, et cetera.	

Sections 60 to 69 above are the sections used by the commissioners.

See table of corresponding sections of the law in the various states and territories beginning on page 261.

**§ 60. Liability of maker.** The maker of a negotiable instrument by making it engages that he will pay it according to its tenor; and admits the existence of the payee and his then capacity to indorse.<sup>1, 1a</sup>

See text, § 120.

Corresponding provision of English Bills of Exchange Act: See 88 (1), (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Where statute does not expressly declare contract void out of which the note arose such is necessarily implied. *Wheatehead v. Coker* (Ala. App.), 76 So. 484.

Foreign corporation payee not complying with statutory conditions as to right to do business. *Citizens Nat. Bank v. Bucheit* (Ala. App.), 71 So. 82.

Maker refuses payment without demanding the exhibition of note. *Freudenberg v. Lucas*, — Cal. App. —, 175 Pac. 482.

Payee a foreign corporation not complying with statutory conditions as to right to do business. *McMann v. Walker*, 31 Colo. 261, 72 Pac. 1055.

Twenty months unreasonable time on demand note for negotiation. *Title Loan & Investment Co. v. Fuller*, — Kan. —, 184 Pac. 727.

Evidence—Burden of Proof. *Harvey v. Squire*, 217 Mass. 411, 105 N. E. 355.

Payee partnership doing business in violation of law does not make defense against holder in due course. *Pontiac Sav. Bank v. Reinforced Concrete Pipe Co.*, 178 Mich. 261, 144 N. W. 486.

Defense that corporation has not filed charter is not good. *Despres, Bridges & Noel v. Hough Drug Co.*, — Miss. —, 86 So. 359.

Existence of payee. *Grover v. Muralt*, 23 N. D. 576, 137 N. W. 830.

Where indorsee was not an innocent purchaser effect of statute declaring all notes null and void made under the prohibited act. *Williams v. Turnhill (Okla.)*, 162 Pac. 770.

Extension of time liability of maker. *Oklahoma State Bank of Sayer v. Seaton*, — Okla. —, 170 Pac. 477.

Maker acknowledges capacity of payee to receive money and to negotiate instrument. *Hill v. McCrow*, 88 Ore. 299.

Existence of payee. *Ingle System Co. v. Norris*, 132 Tenn. 472, 178 S. W. 1113.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Blethenthal v. City of Columbia*, 175 Ala. 398, 402, 57 So. 814; *Jefferson Co. Sav. Bk. v. Compton* (1915), 68 So. 261; *Whitehead v. Coker (Ala. App.)*, 76 So. 484.; *Citizens Nat. Bank v. Bucheit (Ala. App.)*, 71 So. 82; *Jones v. Martin (Ala. App.)*, 74 So. 82.

*Arizona*.—*Cowan v. Ramsay* (1914), 140 Pac. 501.

*California*.—*Frederburg v. Lucas (Cal. App.)*, 175 Pac. 482.

*Colorado*.—*McMann v. Walker* (1903), 31 Colo. 261, 72 Pac. 1055; *Ullery v. Brohm* (1904), 20 Colo. App. 389, 79 Pac. 180.

*Florida*.—*Hough v. State Bk. of New Smyrna* (1911), 61 Fla. 290, 155 So. 461; *Commercial Bank v. Jordan*, 71 Fla. 566.

*Iowa*.—*Hoyt v. Griggs* (1914), 146 N. W. 745.

*Kansas*.—*German-American State Bk. v. Watsen* (1917), 163 Pac. 737, 99 Kans. 686; *State Bk. v. Jeltz* (1917), 167 Pac. 1067; *Conqueror Trust Co. v. Danford* (1919), 177 Pac. 357; *Title Loan & Investment Co. v. Fuller*, 189 Pac. 727.

*Kentucky*.—*First Nat. Bank v. Utterback (Ky.)*, 197 S. W. 534.

*Massachusetts*.—*Union Tr. Co. v. McGinty* (1912), 212 Mass. 205, 98 N. E. 679; *Harvey v. Squire* (1914), 217 Mass. 411, 105 N. E. 355.

*Michigan*.—*Neyens v. Worthington* (1908), 150 Mich. 580, 114 N. W. 404, 18 L. R. A. (N. S.), 142; *Pontiac Sav. Bank v. Reinforced Concrete Pipe Co.*, 178 Mich. 261, 144 N. W. 486.

*Minnesota*.—*Finseth v. Scherer (Minn.)*, 165 N. W. 124.

*Mississippi*.—*Moyse Real Est. Co. v. First Nat. Bk. of Commerce* (1916), 70 So. 821; *Despres, Bridges & Noel v. Hough Drug Co.*, 86 So. 359.

*Missouri*.—*Young v. Gaus* (1908), 134 Mo. App. 166, 113 S. W. 735.

*Nebraska*.—*First Nat. Bk. of Shenandoah v. Kelgord* (1912), 91 Neb. 178, 135 N. W. 548.

*New York*.—Halsey v. Henry Jewett Co. (1907), 190 N. Y. 231, 83 N. E. 25; Ryan v. Sullivan (1911), 143 A. D. 471; Sabine v. Paine (1915), 151 N. Y. Supp. 735; Lazarowitz v. Stafford (1917), 167 N. Y. Supp. 910.

*North Dakota*.—Nat. Bk. of Commerce v. Pick (1904), 13 N. D. 74, 99 N. W. 63; Grover v. Muralt (1912), 23 N. Dak. 576, 137 N. W. 830.

*Ohio*.—Spring Valley Nat. Bk. v. Soners 1910), 21 Ohio Dec. 772.

*Oklahoma*.—Norman v. Lambert (1915), 153 Pac. 1097; Oklahoma Bank v. Seaton (1918), 170 Pac. 477; Williams v. Turnhill (Okla.), 162 Pac. 770.

*Oregon*.—Hill v. McCrow (1918), 170 Pac. 306, 88 Oreg. 299.

*Pennsylvania*.—Weiskucher v. Connelly (1917), 100 Atl. 965; Wostenholme v. Smith (1908), 34 Utah 300, 97 Pac. 329.

*Tennessee*.—Ingle System Co. v. Norris, 132 Tenn. 472, 178 S. W. 1113; Edwards v. Hambly Fruit Products Co., 133 Tenn. 142, 180 S. W. 163.

*Washington*.—Hillman v. Stanley (1909), 56 Wash. 320, 105 Pac. 816; Fisk Rubber Co. v. Pinkey (1918), 170 Pac. 581.

*West Virginia*.—Rusmisse v. White Oak Co. (1917), 92 S. E. 672.

*United States*.—Edwards v. Goode (1916), 228 Fed. 664; First Nat. Bk. of Memphis v. Towner (1917), 239 Fed. 433; Citizen's Tr. Co. v. Abston (1917), 242 Fed. 392.

§ 61. **Liability of drawer.** The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted and paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.<sup>1, 1a</sup>

See text, § 121.

Colorado and Illinois omit the word "subsequent" before "indorser," near the end of the first sentence.

In New York, District of Columbia, North Dakota and England the word "and" has been substituted for "or" between the words "accepted" and "paid."

In North Carolina, through what was doubtless an error in engrossing, the word "negotiating" is substituted for "negating" near the end of the section.

Other acts read "accepted or paid."

The Colorado Act (61) omits "subsequent."

Corresponding provision in English Bills of Exchange Act: Sec. 55 (1), 16 (1).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Drawer's admission as to existence of payee. *Robertson Banking Co. v. Brasfield*, — Ala. —, 79 So. 651.

Purchaser not authorized to indorse name of fictitious payee. *American Exp. Co. v. People's Sav. Bank*, — Iowa —, 181 N. W. 701.

Drawer liable as principal debtor when bank has no funds to pay check drawn. *Baxter v. Brandenburg* (Minn.), 163 N. W. 516.

Drawer who issued bill of exchange which was accepted by corporation and then became transferee of same from defendants could not hold defendants. *U. S. Rail Co. v. Wiener*, 169 App. Div. 561, 155 N. Y. Supp. 425.

Drawer by giving checks represents that he has money from which it can be paid. *State v. Hammelsy*, 52 Ore. 156, 96 Pac. 865, 17 L. R. A. (N. S.) 244.

Rights of holder in due course. *First Nat. Bank of Price v. Parker*, — Utah —, 194 Pac. 661.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Robertson Banking Co. v. Rasfield*, 79 So. 651.

*Idaho*.—*Armstrong v. Sleck* (1908), 14 Ida. 208, 93 Pac. 775.

*Illinois*.—*Simonoff v. Granite City Nat. Bk.* (1917), 116 N. E. 636.

*Iowa*.—*American Express Co. v. People's Savings Bank*, 181 N. W. 701.

*Michigan*.—*People's State Bk. v. Miller* (1915), 152 N. W. 257.

*Minnesota*.—*Baxter v. Brandenburg* (1917), 163 N. W. 516.

*Nebraska*.—*Nat. Bk. of Commerce v. Bossemeyer* (1917), 162 N. W. 503.

*New York*.—*Weiss v. Rieser* (1909), 62 Misc. 292, 114 N. Y. Supp. 983; *U. S. Rail Co. v. Wiener* (1915), 155 N. Y. Supp. 425, 169 A. D. 561.

*Oregon*.—*State v. Hammelsy* (1908), 52 Ore. 156, 96 Pac. 865, 17 L. R. A. (N. S.) 244.

*Utah*.—*First National Bank of Price v. Parker*, 194 Pac. 661.

§ 62. **Liability of acceptor.** The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

1. The existence of the drawer, the genuineness of his signature and his capacity and authority to draw the instrument, and

2. The existence of the payee and his then capacity to indorse.<sup>1. 1a</sup>

See text, § 122.

Cross sections 132, 142, 70, 187, 49: Kentucky and Missouri omit "then" before "capacity" in subdivision 2 above.

Corresponding provisions of the English Bills of Exchange Act: 54, 54 (2), (a), (b), (c).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Drawee liable to subsequent holders after accepting draft with substituted payee. *National City Bank of Chicago v. Nat. Bank of the Republic of Chicago*, — Ill. —, 123 N. E. 832.

Equitable exceptions admitted by court. *Farmers Nat. Bank v. Farmers & Traders Bank*, 159 Ky. 141, 166 S. W. 986, L. R. A. 1915A, 77.

Indorsement by bank "Indorsement guaranteed. Pay any national or state bank or order" not a guaranty to drawee, but to indorsees only. *National Bank of Rolla v. First Nat. Bank of Salem*, 141 Mo. App. 719, 125 S. W. 513.

Acceptor engages to pay according to the tenor of his acceptance. *McLendon v. Bank of Advance*, 188 Mo. App. 417, 174 S. W. 203.

Right of acceptor as against one acquiring paper without consideration. *Title Guarantee & Trust Co. v. Haven*, 196 N. Y. 487, 89 N. E. 1082.

Bank paying check which was forged and given in payment of another's street assessment is entitled to have lien of assessment reinstated and be subrogated thereto. *Title Guarantee & Trust Co. v. Haven*, 214 N. Y. 468, 108 N. E. 819.

Drawees of genuine draft could not recover back the money paid thereon because the bills of lading were forged which accompanied the draft. *Springs v. Hanover Nat. Bk.* 209 N. Y. 224, 103 N. E. 156, 52 L. R. A. (N. S.) 241.

Indorsement of holder of forged check when presented for payment as a warranty to drawee. *Williamsburgh Trust Co. v. Tum Suden*, 120 App. Div. 18, 105 N. Y. Supp. 335.

Acceptor not released from payment by failure to surrender warehouse receipt when draft presented for payment. *First Nat. Bank v. Gidden*, 175 App. Div. 563, 162 N. Y. Supp. 317.

Acceptor liable as makers. *Anglo & London Paris Nat. Bank v. S. A. Jacobson Co.*, 187 N. Y. S. 508.

Drawee permitted to recover money paid to holder of forged check. *First Nat. Bank v. Bank of Wyndmere*, 15 N. D. 299, 108 N. W. 540, 10 L. R. A. (N. S.) 49.

One who accepts a check is liable to the full amount thereof even though it had been raised. *Cherokee Nat. Bank v. Union Trust Co.*, 33 Okla. 342, 347, 125 Pac. 464.

Drawee of forged check may recover money paid thereon. *Union Nat. Bank v. Franklin Nat. Bank*, 249 Pa. 375, 94 Atl. 1080.

Acceptance as follows, "Accepted, payable at Lloyd's Bank, Ltd., London, against indorsed bills of lading," etc., held conditional on delivery of genuine bills of lading. *Guaranty Trust Co. v. Grotian*, 114 Fed. Rep. 433, 52 C. C. A. 235.

Acceptance unconditional and acceptor cannot recover the money paid to the holder of the draft accompanied by purported bill of lading. *Guaranty Trust Co. v. Hannay*, 210 Fed. Rep. 810.

Secretary of Treasury bound by payment of forged draft purporting to be drawn by the American consul in Argentine *United States v. Bank of New York*, 219 Fed. Rep. 648, 134 C. C. A. 579, L. R. A. 1915D, 797.

Acceptor of forged draft cannot recover from bank who was bona fide purchaser. *Postal Telegraph-Cable Co. v. Citizens' Nat. Bank*, 228 Fed. Rep. 601, 143 C. C. A. 123.

United States could not recover money back after Treasury had paid forged draft. *United States v. Chase Nat. Bank*, 241 Fed. Rep. 535.

Application of section to payment of forged check. *Price v. Neal*, 3 Burrow 1354.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Robinson Banking Co. v. Brasfield* (1918), 79 So. 651.

*Connecticut*.—*Hopkins v. Merrill* (1907), 79 Conn. 626, 66 Atl. 174.

*Idaho*.—*Armstrong v. Sleck* (1908), 14 Idaho 208, 93 Pac. 775.

*Illinois*.—*Noel v. Security Bk. of Chicago* (1911), 163 Ill. App. 82; *National City Bank of Chicago v. Nat. Bank of the Republic of Chicago*, — Ill. —, 123 N. E. 832.

*Kentucky*.—*Farmers Nat. Bank v. Farmers & Traders Bank*, 159 Ky. 141, 166 S. W. 986, L. R. A. 1915A, 77.

*Missouri*.—*Nat. Bank. of Rolla v. First Nat. Bank of Salem* (1910), 141 Mo. 719, 125 S. W. 513; *McLendon v. Bank of Advance*, 188 Mo. App. 417, 174 S. W. 203; *Nat. Bank of Commerce v. Am. Nat. Bank* (1910), 148 Mo. App. 1, 127 S. W. 429; *Stephens v. Bawles* (1919), 206 S. W. 589; *Missouri Lincoln Trust Co. v. Third Nat. Bank*, 154 Mo. App. 89.

*Nebraska*.—*State Bank of Chicago v. First Nat. Bank of Omaha* (1910), 87 Neb. 351, 127 N. W. 244; *Nat'l. Bank of Commerce v. Farmers, Etc. Bank*, 87 Neb. 841, 128 N. W. 522.

*New Mexico*.—*State Bank v. Bank of Magdalena*, 21 N. M. 653, 157 Pac. 498.

*New York*.—*Meuer v. Phoenix Nat. Bank* (1904), 94 A. D. 331, 88 N. Y. Supp. 83; *Schlesinger v. Kurzvok* (190), 94 N. Y. Supp. 442, 47 Misc. 634; *Williamsburgh Tr. Co. v. Tum Suden*, 105 N. Y. Supp. 335, 120 A. D. 518; *Title Guarantee & Trust Co. v. Haven* (1908), 126 A. D. 802, 111 N. Y. Supp. 305; *Trust Co. of Amer. v. Hamilton Bank* (1908), 127 A. D. 515, 112 N. Y. Supp. 84; *Consolidated Nat. Bank of N. Y. v. First Nat. Bank of Middleton*, N. Y. (1908), 129 A. D. 538; *Title Guarantee & Tr. Co. v. Haven* (1909), 196 N. Y. 487, 89 N. E. 1082; *Springs v. Hanover Nat. Bk.* (1911), 130 N. Y. Supp. 87, 209 N. Y. 224, 103 N. E. 156, 52 L. R. A. (N. S.) 241; *McMahony v. Roseville Tr. Co.* (1913), 125 A. D. 240, 144 N. Y. Supp. 841; *Morrison v. Chapman* (1913), 140 N. Y. Supp. 700; *First Nat. Bank v. Gidden*, 162 N. Y. Supp. 317, 175 App. Div.



563; *Anglo-South Amer. Bank v. Nat. City Bank of N. Y.* (1914), 146 N. Y. Supp. 457, 161 A. D. 268; *Anglo & London-Paris Nat. Bank v. S. A. Jacobson Co.*, 187 N. Y. Supp. 502; *Bergstram v. Ritz-Carlton Co.*, 157 N. Y. Supp. 959, 171 A. D. 776.

*North Carolina.*—*State Bank v. Cumberland Savings, etc., Co.*, 168 N. C. 605, 85 S. E. 5.

*North Dakota.*—*First Nat. Bank of Lisbon v. Bank of Windemere* (1906), 15 N. Dak. 299, 108 N. W. 546.

*Oklahoma.*—*Cherokee Nat. Bank v. Union Tr. Co.* (1912), 33 Okla. 342, 347, 125 Pac. 464; *Shaffer v. Govreau* (1912), 128 Pac. 507; *First Nat. Bank v. Cummings* (1918), 171 Pac. 862.

*Oregon.*—*First Nat. Bank v. Bank of Cottage Grove*, 59 Ore. 388, 177 Pac. 293.

*Pennsylvania.*—*Cunningham v. First Nat. Bank of Indiana* (1908), 219 Pa. 310; *McNeely Co. v. Bank of No. Amer.* (1908), 221 Pa. 588; *Colonial Trust Co. v. Nat. Bank of Western Pa.* (1912), 50 Pa. Super Ct. 510; *Union Nat. Bank v. Franklin Nat. Bank*, 249 Pa. 375, 94 Atl. 1080.

*Tennessee.*—*Farmers Bank v. Bank of Rutherford*, 115 Tenn. 64, 88 S. W. 939, 112 Am. St. Rep. 817; *Figuers v. Fly*, 137 Tenn. 358, 193 S. W. 117.

*Washington.*—*Canadian Bank of Commerce v. Bingham*, 30 Wash. 484, 71 Pac. 43.

*West Virginia.*—*Bank of Williamson v. McDowell County Bank*, W. Va. (1910), 66 S. E. 761; *Interstate Finance Co. v. Schroeder* (1914), 81 S. E. 552.

*United States.*—*Guaranty Trust Co. v. Grotian*, 114 Fed. Rep. 433, 52 C. C. A. 235; *United States v. Bank of New York*, 219 Fed. Rep. 648, 134 C. C. A. 579, L. R. A. 1915D, 797; *United States v. Chase Nat. Bank*, 241 Fed. Rep. 535; *Postal Telegraph-Cable Co. v. Citizens' Nat. Bank*, 228 Fed. Rep. 601, 143 C. C. A. 123.

§ 63. When person deemed indorser. A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.<sup>1</sup> 1a

See text, § 97.

Cross sections: 17, sub. 64-1, 121, 66, 89, 17-6, 68.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

One who indorses check of another for payment in compliance with bank rule held to indemnify the bank. *Arkansas Nat. Bank v. Gunther*, 127 Ark. 149, 191 S. W. 901.

Persons signing on back of note are indorsers unless a showing is made that they were not to be bound as indorsers. *Bavarian Brewing Co. v. Sobocienski*, — Del. Super. —, 109 A. 55.

Release for failure to make proper demand and notice. *First Nat. Bank of Lincoln v. Sandmeyer*, 164 Ill. App. 98.

Lack of consideration for indorsing does not affect the indorsement. *Elgin Nat. Bank v. Goecke*, 213 Ill. App. 559.

Placing name on note without restriction makes one an indorser. *Muntz v. Schmidt*, 213 Ill. App. 641.

One placing signature upon instrument is indorser unless contrary intention expressed. *Kroll v. Hoyt*, 214 Ill. App. 428.

Where defendant indorsed in blank to enable payee to collect from other party he can make such showing as against payee of note. *Sangster v. Bricker* (Ind. App.), 118 N. E. 383.

Payee indorsing note to enable maker to negotiate it is liable as accommodation indorser. *Mechanics' & Farmers' Savings Bank v. Katterjohn*, 137 Ky. 427, 125 S. W. 1071 App. Cas. 1912A, 439.

Intent as to capacity to be bound by an indorsement not shown by parol. *First Nat. Bank v. Bickel*, 143 Ky. 754, 137 S. W. 790.

Intent to be bound otherwise than as indorser may be shown by face of instrument. *Hibernia Bank v. Dresser*, 132 La. 532, 61 So. 561.

In solido promise may deprive an indorser of his rights as such. *J. M. Dresser Co. v. Hibernia Bank*, 136 La. 314, 67 So. 15.

Parol proof will not change status of indorser. *Lightner v. Roach*, 126 Md. 474, 95 Atl. 62.

Proof of note against partner individually where he indorsed partnership note. *Fourth Nat. Bank v. Mead*, 216 Mass. 521, 104 N. E. 377, 57 L. R. A. (N. S.) 225.

Indorsement in blank cannot be varied by evidence from another source. *First Nat. Bank v. Korn* (Mo. App.), 179 S. W. 721.

Recovery as against an anomalous indorser. *Overland Auto Co. v. Winters* (Mo. App.), 180 S. W. 561.

Blank indorser cannot show that he was merely agent for another. *Eaves v. Keeton* (Mo. App.), 193 S. W. 629.

Signature upon back of negotiable instrument prior to delivery to payee. *Wilson v. Hendee*, 74 N. J. Law 640, 66 Atl. 413.

Note indorsed by third party in blank binds him as indorser and not maker. *Roessle v. Lancaster*, 130 App. Div. 1, 114 N. Y. Supp. 387.

President of corporation is indorser unless words to contrary are added. *Mechanic v. Elgie Iron Works*, 163 N. Y. Supp. 97.

Accommodation indorsers who are directors are entitled to notice of dishonor. *Houser v. Fayssoux*, 168 N. C. 1., 83 S. E. 692, Ann. Cas. 1917B, 835.

When person deemed to be indorser. *Critchler v. Ballard*, — N. C. —, 104 S. E. 134.

Payee who signs under "Payment guaranteed; protest waived" passes title free of equities. *Mangold and Glandt Bank v. Utterback* (Okla.), 160 Pac. 713.

Signer of instrument is indorser unless otherwise designated. *Krumm v. El Reno State Bank*, — Okla. —, 201 Pac. 364.

Stranger signing "I hereby guarantee payment of the within note" is a guarantor only. *Noble v. Beeman-Spaulding Co.*, 65 Ore. 93, 131 Pac. 1006, 46 L. R. A. (N. S.) 162.

Partner who individually indorses is liable as indorser. *Nat. Exch. Bank v. Lubrano*, 29 R. I. 64, 68 Atl. 944.

Signing on back of another's note before delivery makes indorser. *Shull v. Gladden*, — S. C. —, 95 S. E. 521.

When indorser of note not injured by lack of dishonor of check and his rights as to credit. *American Nat. Bank v. Nat. Fertilizer Co.*, 125 Tenn. 328, 143 S. W. 597.

When liable both as indorser and guarantor. *Toler v. Sanders*, 87 W. Va. 398, 87 S. E. 462.

One placing his signature in blank on a note before delivery is an indorser. *Farmers & Merchants Bank of Reedsville v. Kingwood Nat. Bank*, — W. Va. —, 101 S. E. 734.

Signing at place for maker's name is not indorsement. *Germania Nat. Bank v. Mariner*, 129 Wis. 544, 109 N. W. 574.

Officers of company signed note so money could be secured are liable as indorsers and are entitled to notice of dishonor. *McDonald v. Luckenback*, 170 Fed. Rep. 434, 95 C. C. A. 604.

Directors signing upon back of note by president of company. *Murray v. Third Nat. Bank*, 234 Fed. Rep. 481, 148 C. C. A. 247.

1a. The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Long v. Givin* (1919), 80 So. 440; *Zadek v. Forcheimer* (1918), 77 So. 941.

*Arkansas*.—*Hodges v. Collison* (1915), 172 S. W. 1147; *Tancred v. First Nat. Bank* (1916), 187 S. W. 160; *Arkansas Nat. Bank v. Gunther*, 127 Ark. 149, 191 S. W. 901.

*Colorado*.—*Crosby v. Woodbury* (1906), 37 Colo. 1, 89 Pac. 34; *Archuleta v. Johnston* (1912), 127 Pac. 134.

*Connecticut*.—*Hopkins v. Merrill* (1907), 79 Conn. 626, 66 Atl. 174; *Knapp Co. v. Tidewater Coal Co.* (1912), 85 Conn. 147, 81 Atl. 1063.

*Delaware*.—*Bavarian Brewing Co. v. Sobocienski*, — Del. Super. —, 109A, 55.

*Florida*.—*Hough v. State Bank of Smyrna* (1911), 61 Fla. 290, 55 So. 461; *Baumeister v. Kuntz* (1907), 53 Fla. 340, 42 So. 886; *Hopkins v. Commercial Bank* (1912), 64 Fla. 310; *Williams v. Peninsular Grocery Co.* (1917), 75 So. 517.

*Idaho*.—*Bank of Montpelier v. Montpelier Lumber Co.* (1909), 16 Ida. 730, 102 Pac. 685.

*Illinois*.—*Elgin Nat. Bank v. Goecke*, 213 Ill. App. 559, 129 N. E. 149; *First Nat. Bank of Lincoln v. Sandmeyer*, 164 Ill. App. 98; *Muntz v. Schmitz*, 213 Ill. App. 641; *Kroll v. Hoyt*, 214 Ill. App. 428.

*Indiana*.—*Sangster v. Bricker* (Ind. App.), 118 N. E. 383.

*Iowa*.—*Allison v. Hollembeak* (1908), 138 Iowa 479, 114 N. W. 1059; *Porter v. Moles* (1911), 151 Iowa 279, 131 N. W. 23; *Devoy & Kuhn v. Huttig* (1916), 156 N. W. 412.

*Kentucky*.—*Diamond Distilleries Co. v. Gott* (1910), 137 Ky. 585, 126 S. W. 131; *Mechanics' & Farmers' Sav. Bank v. Katterjohn* (1910), 137 Ky. 427, 125 S. W. 1071; *Hoyland v. Nat. Bank of Middleborough* (1910), 137 Ky. 682, 126 S. W. 356; *First Nat. Bank v. Bickel* (1911), 143 Ky. 754, 137 S. W. 790; *Williams v. Paintsville Nat.*

Bank (1911), 143 Ky. 781, 137 S. W. 535; Lyons Lumber Co. v. Stewart (1912), 147 Ky. 653, 145 S. W. 376; Elsey v. People's Bank of Hardwell (1916), 183 S. W. 873.

*Louisiana.*—Parker v. Guillot (1907), 118 La. 223; Pugh v. Sample (1909), 123 La. 791, 49 So. 526; Hackley State Bank v. Magee (1911) 128 La. 1008; J. M. Dresser v. Hibernia Bank & Tr. Co. (1915), 136 La. 314, 67 So. 15; Hibernia Bank v. Dresser, 132 La. 532, 61 So. 561; Bonart v. Rabito, 141 La. 970, 76 So. 166.

*Maryland.*—Lightner v. Roach (1915), 126 Md. 474, 95 Atl. 62.

*Massachusetts.*—Quimby v. Vermum (1906), 190 Mass. 211, 76 N. E. 671; Toole v. Crafts (1906), 193 Mass. 110, 78 N. E. 775, 118 Am. St. 455; Bamford v. Boynton (1909), 200 Mass. 560, 86 N. E. 900; Arlington Nat. Bank v. Bennett (1913), 214 Mass. 352, 101 N. E. 982; Fourth Nat. Bank v. Mead (1914), 216 Mass. 521, 104 N. E. 377, 57 L. R. A. (N. S.) 225; Aronson v. Uurenburg (1914), 105 N. E. 1056; Lankofsky v. Raymond (1914), 104 N. E. 489.

*Michigan.*—Ensign v. Fogg (1913), 143 N. W. 82.

*Missouri.*—Walker v. Dunham (1909), 135 Mo. App. 396, 115 S. W. 1086; Phoenix Nat. Bank v. Hanlon, 183 Mo. App. 243, 166 S. W. 830; Hawkins v. Wiest (1912), 167 Mo. App. 439; First Nat. Bank v. Korn (1915), 179 S. W. 721; Eaves v. Keeton (Mo. App.), 193 S. W. 629; Overland Auto Co. v. Winters (Mo. App.), 180 S. W. 561.

*New Hampshire.*—Trafton v. Garnsey (1916), 99 Atl. 290.

*New Jersey.*—Wilson v. Hendee (1907), 74 N. J. L. 640, 66 Atl. 413; Gibbs v. Guaraglis (1907), 75 N. J. L. 168, 67 Atl. 81; Mackintosh v. Gibbs (1909), 79 N. J. L. 40, 74 Atl. 708; Morris Co. Brick Co. v. Austin (1910), 75 Atl. 550.

*New York.*—Howard v. Van Gieson (1899), 46 A. D. 77; Williamsburg Tr. Co. v. Tum Sudeu (1907), 120 A. D. 518, 105 N. Y. Supp. 335; Haddock, Blanchard & Co. v. Haddock (1908), 192 N. Y. 499, 82 N. E. 682, 103 N. Y. Supp. 584; Roessle v. Lancaster (1909), 130 A. D. 1, 114 N. Y. Supp. 387; Blanchard v. Blanchard (1911), 201 N. Y. 134, 94 N. E. 630, affirming, 133 A. D. 937, without an opinion; Bender v. Bahr Trucking Co. (1911), 144 A. D. 742; Yonkers Nat. Bank v. Mitchell (1913), 141 N. Y. Supp. 128; Carnegie Trust Co. v. Kistler (1915), 152 N. Y. Supp. 240; Mechanic v. Elgic Iron Works (1917), 163 N. Y. Supp. 97; Bennett v. Kistler, 163 N. Y. Supp. 555.

*North Carolina.*—Rouse v. Wooten (1906), 140 N. Car. 557, 53 S. E. 430, 111 Am. St. 875; Perry Co. v. Taylor (1903), 148 N. Car. 362, 62 S. E. 423; Sykes v. Everett (1914), 83, 3 S. E. 585; Meyers Co. v. Battic (1915), 170 N. C. 168; 86 S. E. 1034; Critcher v. Ballard, 104 S. E. 134; Houser v. Faysson, 168 N. C. 1, 83 S. E. 692, Ann Cas. 1917B, 835.

*Ohio.*—Dollar Sav. Bank v. Barberton Pottery Co. (1907), 17 Ohio Dec. 539; Rockfield v. First Nat. Bank of Springfield (1907), 77 Ohio St. 311, 83 N. E. 392, 14 L. R. A. (N. S.) 842.

*Oklahoma.*—Shaffer v. Govreau (1912), 128 Pac. 507; Howard v. Kincaid (1916), 156 Pac. 628; Mangold and Glandt Bank v. Utterback (Okla.), 160 Pac. 713; Krumm v. El Reno State Bank (Okla.), 201 Pac. 364.

*Oregon*.—*Hunter v. Harris* (1912), 63 Oreg. 505, 127 Pac. 786; *Noble v. Beeman-Spaulding-Woodward Co.* (1913), 65 Oreg. 93; 131 Pac. 1006.

*Rhode Island*.—*McLean v. Bryer* (1903), 24 R. I. 599, 54 Atl. 373; *Deahey v. Choquet* (1907), 28 R. I. 338; *Nat. Ex. Bank v. Lubrano* (1908), 29 R. I. 64, 68 Atl. 944.

*South Carolina*.—*Folk v. Moore* (1916), 88 S. E. 18; *Norwood Nat. Bank v. Piedmont Pub. Co.* (1917), 91 S. E. 866; *Shull v. Gladden*, 95 S. E. 521.

*Tennessee*.—*Mercantile Bank of Memphis v. Busby* (1908), 120 Tenn. 652, 113 S. W. 390; *Pharr v. Stevens* (1911), 124 Tenn. 670, 139 S. W. 730; *Am. Nat. Bank v. Nat. Fertilizer Co.* (1911), 125 Tenn. 329, 143 S. W. 597; *Nolan v. H. E. Wilcox Motor Co* (1917), 137 Tenn. 667, 195 S. W. 581.

*Texas*.—*Borshow v. Wilson* (1916), 190 S. W. 202.

*Virginia*.—*Colley v. Summers Parrott Hardware Co.* (1916), 119 Va. 439, 89 S. E. 906; *Colona v. Parksley Nat. Bank* (1917), 92 S. E. 979.

*West Virginia*.—*First Nat. Bank of Hinton v. Plumley* (1915), 87 S. E. 94; *Toler v. Sanders* (1915), 87 W. Va. 398, 87 S. E. 462; *Thompson v. Curry* (1917), 91 S. E. 801; *Bank of Greenville v. Lowry* (1917), 94 S. E. 985; *Farmers' & Merchants' Bank of Reedsville v. Kingwood Nat. Bank*, 101 S. E. 734.

*Wisconsin*.—*Germania Nat. Bank v. Mariner* (1906), 129 Wis. 544, 109 N. W. 574, *Union Bank of Milwaukee v. Commer. Securities Co.* (1916), 147 N. W. 510.

*Utah*.—*Wostenholme v. Smith* (1908), 34 Utah 300, 97 Pac. 329.

*United States*.—*McDonald v. Luckenbach* (1909), 170 Fed. 434, 95 C. C. A. 604; *Murray v. Third Nat. Bank of St. Louis* (1916), 234 Fed. 481; *First Nat. Bank v. Towner* (1917), 239 Fed. 433.

§ 64. **Liability of irregular indorser.** Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.<sup>1. 1a</sup>

See text, § 109.

Cross sections: 52, 64-1, 120-1, 121, 89, 63, 68, 66, 53, 82-3, 89, 109, 124.

The Illinois statute substitutes for subdivisions 1 and 2 the following: "1. If the instrument is a note or bill payable to the order of a third person, or an accepted bill payable to the order of the drawer, he is liable to the payee and to all subsequent parties. 2. If the instrument is a note or unaccepted bill payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Parol to show irregular indorser a maker or indorser. *Long v. Gwin*, 188 Ala. 196, 66 So. 88.

Is one indorsing before delivery a joint maker. *Burke v. Jefferson Bank*, 180 S. W. 500, 121 Ark. 633.

Status of one indorsing note before delivery to payee. *Tancred v. First Nat. Bank*, 124 Ark. 154, 187 S. W. 160.

Parol evidence as to contrary intention inadmissible. *Baumeister v. Kuntz*, 53 Fla. 340, 42 So. 886.

Inadmissible evidence as to intention of indorser. *Hopkins v. Commercial Bank*, 64 Fla. 310, 60 So. 183.

Holder may recover against accommodation indorser where he did not know of restrictions of indorsement. *Elgin Nat. Bank v. Goecke*, —Ill. —, 129 N. E. 149.

Status presumed as to party indorsing before delivery. *Van Kleek v. Channon*, 175 Ill. App. 626.

Placing signature on note in blank before delivery makes one liable to payee as indorser. *Kroll v. Hoyt*, 214 Ill. App. 428.

Effect of maker of note or drawer of bill writing name on back thereof. *Pickering v. Cording*, 92 Ind. 306, 47 Am. Rep. 145.

Parol evidence as to indorser's intention inadmissible. *Porter v. Moles*, 151 Iowa 279, 131 N. W. 23.

Holder through forged indorsement cannot recover. *American Exp. Co. v. People's Sav. Bank*, —Iowa —, 181 N. W. 701.

Purpose and liability of one placing name upon back of promissory note. *Pineland Realty Co. v. Clements*, —La. —, 88 So. 818.

Stranger to bill who indorses name thereon must be maker. *Phoenix Co. v. Fuller* (Mass.), 3 Allen 441.

Irregular indorser entitled to same defenses as maker. *Leonard v. Draper*, 187 Mass. 536, 73 N. E. 644.

Where agreement to indorse before delivery is carried out after delivery to payee. *American, etc., Co. v. Grant*, 135 Minn. 208, 160 N. W. 676.

Renewal note after Negotiable Instruments Law affects irregular indorser. *Walker v. Dunham*, 135 Mo. App. 396, 115 S. W. 1086.

Liability of irregular indorser to payee. *Wilson v. Hendee*, 74 N. J. Law, 640, 66 Atl. 413.

Allegation and evidence of indorser's intention of liability to payee unnecessary. *Far Rockaway Bank v. Norton*, 186 N. Y. 484, 79 N. E. 709.

Liability of indorser in blank to drawer-payee. *Haddock, Blanchard & Co. v. Haddock*, 192 N. Y. 499, 85 N. E. 682.

Evidence may show indorser before delivery and accommodation indorser. *Franklin v. Kidd*, 219 N. Y. 409, 114 N. E. 839.

Effect of signature after instrument in possession of payee. *Kohn v. Consolidated Co.*, 30 Misc. Rep. 725, 63 N. Y. Supp. 265.

Unnecessary allegations and proof as to indorser's intention. *Corn v. Levy*, 97 App. Div. 48, 89 N. Y. Supp. 658.

Payee to hold indorser before delivery has burden of showing indorsement. *Bender v. Bahr Trucking Co.*, 144 App. Div. 472, 129 N. Y. Supp. 737.

Accommodation indorsement after delivery to payee creates no liability to payee. *Flinch v. Wood*, 145 N. Y. Supp. 51.

Effect of stranger to bill placing name on back thereof. *Church v. Swope*, 38 Ohio St. 493.

Maker of note or drawer of bill not indorsers. *Ewan v. Brooks-Waterfield Co.*, 55 Ohio St. 596, 45 N. E. 1094, 35 L. R. A. 786, 60 Am. St. Rep. 719.

Irregular indorser is bound as indorser. *Krumm v. El Reno State Bank*, — Okla. —, 201 Pac. 364.

Oral evidence admissible to show indorser co-maker and entitled to contribute. *Hunter v. Harris*, 63 Ore. 505, 127 Pac. 786.

When irregular indorsing directors become principals. *In re Aldred's Estate*, 229 Pa. 627, 79 Atl. 141.

Indorsement in possession of payee as per prior agreement to do so. *Downey v. O'Keefe*, 26 R. I. 571, 59 Atl. 929.

Indorser before maturity entitled to notice of dishonor. *Shull v. Gladden*, — S. Car. —, 95 S. E. 521.

Parol evidence of indorser's intention admissible. *Mercantile Bank v. Busby*, 120 Tenn. 652, 113 S. W. 390.

Evidence admitted to show intention. *Pharr v. Stevens*, 124 Tenn. 669, 139 S. W. 670.

Maker engages to pay instrument according to its terms. *First Nat. Bank of Price v. Parker*, — Utah —, 194 Pac. 661.

What parties are indorsers. *Farmers & Merchants Nat. Bank of Reedsville v. Kingwood Nat. Bank*, — W. Va. —, 101 S. E. 734.

Proof of omission of official title by mistake, allowed against holder in due course. *Germania Nat. Bank v. Mariner*, 129 Wis. 544, 109 N. W. 574.

Indorser before delivery is liable to payee. *Robinson v. Mann*, 31 Canada Supreme Court Reports 484.

Defendant who indorsed blank bill form after acceptance, plaintiff filled in form payable to himself, is liable. *Glenie v. Bruce Smith* (1908), 1 K. B. 263.

Backer to acceptor not recognized at common law. *Steele v. McKinley*, 5 App. Cas. 754.

Irregular indorser's liability where he indorses after payee's indorsement. *Jenkins v. Coomber* (1898), 2 Q. B. 168.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Long v. Gwin* (1914), 188 Ala. 196, 66 So. 88; *Schillinger v. Wickersham* (1917), 75 So. 11.

*Arkansas*.—*Burke v. Jefferson Bank*, 121 Ark. 633, 180 S. W. 500; *Tancred v. First Nat. Bank*, 124 Ark. 154, 187 S. W. 160; *Vandeventer v. Davis*, 92 Ark. 604.

Connecticut.—Peck v. Easton (1902), 74 Conn. 456, 51 Atl. 134; Knapp Co. v. Tidewater Coal Co. (1912), 85 Conn. 147, 81 Atl. 1063.

Florida.—Baumeister v. Kuntz (1907), 53 Fla. 340, 42 So. 886; Hough v. State Bank of New Smyrna (1911), 61 Fla. 290, 55 So. 461;; Hopkins v. Commercial Bank, 64 Fla. 310, 60 So. 183.

Illinois.—Elgin Nat. Bank v. Goecke, 129 N. E. 149; First Nat. Bank of Lincoln v. Sandmeyer (1911), 164 Ill. App. 98; Justice v. Stonecipher (1915), 108 N. E. 722, 267 Ill. 448; Kroll v. Hoyt, 214 Ill. App. 428; Van Kleek v. Channon, 175 Ill. App. 626;.

Iowa.—Devoy & Kuhn Coal & Coke Co. v. Huttig (1916), 156 N. W. 412; Porter v. Moles, 151 Iowa 279, 131 N. W. 23; American Express Co. v. Peoples' Sav. Bank, 181 N. W. 701.

Indiana.—Pickering v. Cording, 92 Ind. 306, 47 Am. Rep. 145.

Kentucky.—First Nat. Bank v. Bickel (1911), 143 Ky. 754, 137 S. W. 790; Lyons Lumber Co. v. Stuart, 147 Ky. 653, 145 S. W. 376; Young v. Exchange Bank of Ky., 152 Ky. 293, 153 S. W. 444, Ann. Cas. 1915 B, 148.

Louisiana.—Taylor v. Vossburg Mineral Spring Co. (1911), 128 La. 364, 54 So. 907; Nesho Milling Co. v. Farmers Co., 130 La. 949, 58 So. 825; Lowry v. Wilkinson, 135 La. 105, 64 So. 1003; Pinelaw Realty Co. v. Clements (La.), 88 So. 818.

Maryland.—Lightner v. Roach, 126 Md. 474, 95 Atl. 62.

Massachusetts.—Leonard v. Draper (1905), 187 Mass. 536, 73 N. E. 644; Thorpe v. White (1905), 188 Mass. 333, 74 N. E. 592; Quimby v. Varnum (1906), 190 Mass. 211, 76 N. E. 671; Toole v. Crafts (1906), 193 Mass. 110, 78 N. E. 775, 118 Am. St. 455; Bamford v. Boynton (1909), 200 Mass. 560, 86 N. E. 900; Winthrop Nat. Bank v. Mead (1913), 102 N. E. 69; Fourth Nat. Bank v. Mead (1914), 104 N. E. 377; Lankofsky v. Raymond (1914), 104 N. E. 489; Conners v. Sullivan (1915), 108 N. E. 503;.

Michigan.—Ensign v. Flagg, 177 Mich. 317, 143 N. W. 82; Ensign v. Dunn (1914), 148 N. W. 343.

Minnesota.—American, etc., Co. v. Grant, 135 Minn. 208, 160 N. W. 676.

Missouri.—Walker v. Dunham (1909), 135 Mo. App. 396, 115 S. W. 1086; Overland Auto Co. v. Winters (1915), 180 S. W. 561.

New Jersey.—Wilson v. Hendee (1907), 74 N. J. L. 640, 66 Atl. 413; Gibbs v. Guaragalia (1907), 75 N. J. L. 168, 67 Atl. 81; Morris Co. Brick Co. v. Austin (1910), 75 Atl. 550.

New York.—Moore v. Cross, 19 N. Y. 227, 75 Am. Dec. 326; Howard v. Van Gieson (1899), 46 A. D. 77, 67 N. Y. Supp. 620, 56 A. D. 217; Kohn v. The Consolidated Butter & Egg Co. (1900), 63 N. Y. Supp. 265; 30 Misc. 725; Corn v. Levy (1904), 97 A. D. 48, 89 N. Y. Supp. 658; McMoran v. Lange, 48 N. Y. Supp. 1000, 25 A. D. 77; Far Rockaway Bank v. Norton (1906), 186 N. Y. 484, 79 N. E. 709; Williamsburg Tr. Co. v. Tum Suden (1907), 120 A. D. 518, 105 N. Y. Supp. 335; Haddock, Blanchard & Co. v. Haddock (1908), 192 N. Y.



499, 85 N. E. 682, 103 N. Y. Supp. 584; *Roessale v. Lancaster* (1909), 130 A. D. 1, 114 N. Y. Supp. 387; *Bender v. Bahr Trucking Co.* (1911), 129 N. Y. Supp. 737, 144 A. D. 742; *Abbott v. LeProvost* (1915), 151 N. Y. Supp. 616; *Flinch v. Wood* (1913), 145 N. Y. Supp. 51, *Yonkers Nat. Bank v. Mitchell* (1913), 141 N. Y. Supp. 128; *Franklin v. Kidd* (1917), 219 N. Y. 409, 114 N. E. 839; *Mechanic v. Elgie Iron Works*, 163 N. Y. Supp. 97, 98 Misc. Rep. 620.

*North Carolina*.—*Rouse v. Wooten* (1906), 140 N. Car. 557, 53 S. E. 430, 111 Am. St. 875; *Perry Co. v. Taylor* (1908), 148 N. Car. 362, 62 S. E. 423; *Myers Co. v. Battle*, 170 N. C. 168, 86 S. E. 1034.

*North Dakota*.—*Farquhar Co. v. Highem* (1907), 16 N. Dak. 106, 112 N. W. 557; *Harris v. Jones* (1912), 23 N. Dak. 488, 136 N. W. 1080.

*Ohio*.—*Dollar Sav. Bank v. Barberton Pottery Co.* (1907), 17 Ohio Dec. 539; *Church v. Swope*, 38 Ohio St. 493; *Evans v. Brooks-Waterfield Co.*, 55 Ohio St. 596, 45 N. E. 1094, 35 L. R. A. 786, 60 Am. St. Rep. 719; *Rockfield v. First Nat. Bank of Springfield* (1907), 77 Ohio St. 311, 83 N. E. 392, 14 L. R. A. (N. S.) 842.

*Oklahoma*.—*Krumm v. El Reno State Bank* (Okla.), 201 Pac. 364.

*Oregon*.—*Hunter v. Harris* (1912), 63 Ore. 505, 127 Pac. 786; *Moll v. Roth Co.* (1915), 152 Pac. 235.

*Pennsylvania*.—*In re Aldred's Estate*, 229 Pa. 627, 79 Atl. 141.

*Rhode Island*.—*McLean v. Bryer*, 24 R. I. 599, 54 Atl. 373; *Downey v. O'Keefe* (1905), 26 R. I. 571, 59 Atl. 929; *Deahy v. Choquet* (1907), 28 R. I. 338, 67 Atl. 421, 14 L. R. A. (N. S.) 847.

*South Carolina*.—*Bank of Inman v. Elliott* (1915), 84 S. E. 996; *Norwood Nat. Bank v. Piedmont Pub. Co.* (1917), 91 S. E. 866; *Shull v. Gladden*, 95 S. E. 521.

*Tennessee*.—*Mercantile Bank of Memphis v. Busby* (1908), 120 Tenn. 652, 113 S. W. 390; *Pharr v. Stevens* (1911), 124 Tenn. 670, 139 S. W. 730; *Cohn v. Hitt* (1916), 182 S. W. 235; *Nolan v. Wilcox Co.*, 137 Tenn. 667, 195 S. W. 581.

*Utah*.—*First Nat. Bank of Price v. Parker*, 194 Pac. 661.

*West Virginia*.—*Thompson v. Curry* (1917), 91 S. E. 801; *Farmers and Merchants Nat. Bank of Reedsville v. Kingwood Nat. Bank*, 101 S. E. 734.

*Wisconsin*.—*Germania Nat. Bank v. Mariner* (1906), 129 Wis. 544, 109 N. W. 574; *Union Bank v. Commercial Securities Co.*, 163 Wis. 470, 157 N. W. 510.

*United States*.—*In re Swift* (1901), 106 Fed. 65; *Richards v. Street* (1908), 31 App. D. C. 427; *Am. Trust Co. v. Canevin* (1911), 107 C. C. A. 543; *In re McCord* (1909), 174 Fed. 72; *Wilson v. Knowles* (1914), 213 Fed. 782; *Murray v. Third Nat. Bank*, 234 Fed. Rep. 481, 148 C. C. A. 247.

§ 65. **Warranty; where negotiation by delivery, et cetera.** Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be, and

3. That all prior parties had capacity to contract; and

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.<sup>1, 1a</sup>

See text, § 123.

Cross section: 66.

Corresponding provision of English Bills of Exchange Act: See 58 (1), (2), (3).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Subsequent transfer or indorsement is not of itself an assignment of the warranty of an indorser without recourse. *Watson v. Cheshire*, 18 Iowa 202, 87 Am. Dec. 382.

Action for cancellation of note because checks received therefor valueless. *Dille v. White*, 132 Iowa 327, 109 N. W. 909, 10 L. R. A. (N. S.) 510.

Where all parties ignorant of forgery payment of interest and extending time does not relieve transferor. *Cluseau v. Wagner*, 126 La. 375, 52 So. 547.

Indorser for collection warrants genuineness. *In re Ziegenheim* (Mo. App.), 187 S. W. 893.

Seller warrants genuineness of signature. *Hunt v. Sanders*, — Mo. —, 232 S. W. 456.

Effect of indorsement "By agreement with recourse after all security has been exhausted waiving protest." *Smith v. Bradley*, 16 N. D. 306, 112 N. W. 1062.

Transferor's warranty as to signature. *Vogel v. Payne*, 189 N. Y. S. 285.

Indorser without recourse warrants that instrument is genuine. *State Exch. Bank of Elk City v. Nat. Bank of Commerce of St. Louis, Mo.*, — Okla. —, 174 Pac. 796.

What indorsement without recourse warrants. *State Exch. Bank of Elk City v. Traders' Nat. Bank of Kansas City, Mo.*, — Okla. —, 174 Pac. 799.

Liability of indorser without recourse. *Cressler v. Brown*, — Okla. —, 192 Pac. 417.

No implied warranty created. *Smith v. Barner*, — Ore. —, 188 Pac. 216.

Warranty of genuineness of negotiable instrument is to holders. *First Nat. Bank v. Brule Nat. Bank of Chamberlain*, — S. D. —, 168 N. W. 1054.

Payee's indorsement forged each indorsee can recover from his indorsers. *Main St. Bank v. Planters Nat. Bank*, 116 Va. 137, 81 S. E. 24. Indorser of draft does not warrant genuineness to drawee. *American Hominy Co. v. Millikin Nat. Bank*, 273 Fed. 550.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Connecticut*.—*Hopkins v. Merrill* (1907), 79 Conn. 626, 66 Atl. 174.

*Illinois*.—*Graves v. Neeves* (1913), 183 Ill. App. 235.

*Iowa*.—*Watson v. Cheshire*, 18 Iowa 202, 87 Am. Dec. 382; *Dille v. White* (1906), 132 Iowa, 327, 109 N. W. 909, 10 L. R. A. (N. S.) 510; *State ex rel. Carroll v. Corning St. Sav. Bank*, (1908), 139 Iowa 338, 115 N. W. 937; *Porter v. Moles* (1911), 151 Iowa 279, 131 N. W. 23; *Devoy & Kuhn C. & C. Co. v. Huttig* (1916), 156 N. W. 412.

*Louisiana*.—*Cluseau v. Wagner*, 126 La. 375, 52 So. 547; *Taylor v. Vossburg Mineral Spring Co.* (1911), 128 La. 364, 54 So. 907,

*Massachusetts*.—*Middleborough Nat. Bank v. Cole* (1906), 191 Mass. 161, 77 N. E. 781; *Lankofsky v. Raymond* (1914), 104 N. E. 489.

*Michigan*.—*Sheffer v. Fleischer* (1909), 158 Mich. 270, 122 N. W. 543.

*Missouri*.—*Hawkins v. Wiest* (1912), 167 Mo. App. 439; *In re Ziegenheim* (1916), 187 S. W. 893; *Dominick v. Farmer* (1918), 201 S. W. 955; *Hunt v. Sanders* (Mo.), 232 S. W. 456; *State Exch. Bank of Elk City v. Traders' Nat. Bank of Kansas City* (Mo.), 174 Pac. 799; *State Exch. Bank of Elk City v. Nat. Bank of Commerce of St. Louis, Mo.*, 174 Pac. 786.

*Nebraska*.—*Nat. Bank of Commerce v. Farmers Merchants Bank* (1910), 87 Neb. 841.

*Nevada*.—*Jensen v. Wilslef* (1913), 132 Pac. 16.

*New Jersey*.—*Morris Co. Brick Co. v. Austin* (1910), 75 Atl. 550.

*New York*.—*Littaner v. Godman*, 72 N. Y. 506, 28 Am. St. Rep. 171; *Williamsburg Tr. Co. v. Tum Suden* (1907), 120 A. D. 518, 105 N. Y. Supp. 335; *Steinberger v. Hittelman* (1915), 156 N. Y. Supp. 320; *Vogel v. Payne*, 189 N. Y. S. 285.

*North Dakota*.—*Smith v. Bradley* (1907), 16 N. Dak. 306, 112 N. W. 1062.

*Oklahoma*.—*Cressler v. Brown*, 192 Pac. 417.

*Oregon*.—*Smith v. Barner*, 188 Pac. 216.

*South Dakota*.—*First Nat. Bank v. Brule Nat. Bank of Chamberlain* (1918), 168 N. W. 1054.

*Tennessee*.—*Litchfield Shuttle Co. v. Cumberland Valley Nat. Bank* (1916), 134 Tenn. 379, 183 S. W. 1006; *Figures v. Fly* (1917), 193 S. W. 117.

*Virginia*.—*Main St. Bank v. Planters Nat. Bank of Richmond* (1914), 116 Va. 137, 81 S. E. 24.

*Washington*.—Hillman v. Stanley (1909), 56 Wash. 320, 105 Pac. 816; Fidelity Nat. Bank v. Hosea (1916), 160 Pac. 960.

*Wyoming*.—Hamilton v. Drefenderfer (1913), 131 Pac. 37.

*United States*.—Willard v. Crook (1903), 21 App. D. C. 237; American Hominy Co. v. Millikin Nat. Bank. 273 Fed. 550.

**§ 66. Liability of general indorser.** Every indorser who indorses without qualifications, warrants to all subsequent holders in due course:

1. The matter and things mentioned in subdivisions one, two, and three of the next preceding section; and

2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.<sup>1</sup> <sup>1a</sup>

See text, § 123.

Cross sections: 64, 124, 89, 109, 119-5, 2.

The Illinois statute adds "not an accommodation party" between the words "indorser" and "who" in the first line; adds "and four" after "three" in subdivision one and substitutes "every indorser" for "he" in the first line of the last paragraph.

Corresponding provision of English Bills of Exchange Act: Sec. 55 (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Unqualified indorser of a secured installment note cannot vary his indorsement contract by parol. Hopkins v. Merrill, 79 Conn. 636, 66 Atl. 174.

Allegations as to liability of indorser "according to the tenor." Donegan v. Dekle Inv. Co. (Fla.) 74 So. 11.

Indorser without qualification not entitled to defense of non-execution of note. Williams v. Peninsular Grocery Co. (Fla.), 75 So. 17.

Effect of fraud in transfer upon plaintiff as holder in due course. Beachy v. Jones, — Kans. —, 195 Pac. 184.

Holder not required to show maker's insolvency to hold indorser. Williams v. Paintsville Nat. Bank, 143 Ky. 781, 137 S. W. 535, Ann. Cas. 1912D, 350.

Indorsers before delivery to payee not bound where payee knew of illegality and want of consideration. *Burke v. Smith*, 111 Md. 624, 75 Atl. 114.

Indorser of corporation note cannot defend on ground treasurer had no authority to execute. *Leonard v. Draper*, 187 Mass. 536, 73 N. E. 64.

Indorsement guarantees previous indorsements. *State v. Merchants' Nat. Bank of St. Paul*, — Minn. —, 177 N. W. 135.

Indorser without qualification can not indirectly contradict his written contract. *People's Bank v. Baker* (Mo. App.), 193 S. W. 632.

Conflict of laws in different jurisdictions as affecting indorsers liabilities. *Mackintosh v. Gibbs*, 79 N. J. Law, 40, 74, Atl. 708.

Accommodation indorser guarantees payees signature as to future holders in good faith. *Packard v. Windholz*, 88 App. Div. 365, 84 N. Y. Supp. 666. Affirmed 180 N. Y. 549.

One of joint executives cannot without consent of others indorse note. *Union Bank v. Sullivan*, 214 N. Y. 332, 108 N. E. 558.

Maker's insolvency no defense for indorser. *Curtis v. Davidson*, 215 N. Y. 395, 109 N. E. 281.

Maker's indorsement is no stronger than his original contract as maker. *Sabine v. Paine*, 166 App. Div. 9, 151 N. Y. Supp. 735. Affirmed 223 N. Y. 401, 119 N. E. 849.

Alteration of note by striking out the name of one of several payees as affecting indorser's liability. *First Nat. Bank v. Gridley*, 112 App. Div. 398, 98 N. Y. Supp. 445.

Where indorser negligent as to discovery of forgery drawee may recover back the money. *Williamsburgh Trust Co. v. Tum Suden*, 120 App. Div. 518, 105 N. Y. Supp. 335.

Unqualified indorsement prevents defense of usury at inception. *Horowitz v. Wollowitz*, 59 Misc. Rep. 520, 110 N. Y. Supp. 972.

Maker cannot sue indorser on note as such. *Abramowitz v. Abramowitz*, 113 N. Y. Supp. 798.

Indorsers warranty does not run to plaintiff who discounts for maker of usurious note. *Bruck v. Lambeck*, 63 Misc. Rep. 117, 118 N. Y. Supp. 494.

Defendant bank indorsing forged check "Received payment through New York Clearing House. Indorsements Guaranteed," must refund to plaintiff drawee bank. *N. Y. Produce Exch. Bank v. Twelfth Ward Bank*, 134 App. Div. 953, 119 N. Y. Supp. 988.

Effect of purchaser requiring indorsement of note upon the sale of the note. *Sedbury v. Duffy*, 158 N. C. 432, 74 S. E. 355.

Parol evidence admissible as between indorser and immediate indorsee. *Sykes v. Everett*, 167 N. C. 600, 83 S. E. 585.

Indorsement by nominal payee to real owner of note creates no liability. *Sawyer State Bank v. Sutherland*, 36 N. D. 493, 162 N. W. 696. Indorsee's knowledge of incapacity of prior party does not destroy indorser's liability. *In re Young's Estate*, 234 Pa. 287, 83 Atl. 201.

Indorser engages that on due presentment note shall be paid. *Helfrich v. Snyder*, — Pa. —, 112 A. 749.

Drawee upon acceptance of check becomes the guarantor thereof. *Farmers' Bank v. Bank of Rutherford*, 115 Tenn. 64, 88 S. W. 939, 112 Am. St. Rep. 817.

Drawee not holder in due course and presentment for payment is not negotiation. *Figures v. Fly*, 137 Tenn. 358, 193 S. W. 117.

Indorser's agreement is a new one although the indorsee knew of agreement to take land in payment of note. *Fidelity Nat. Bank v. Hosea* (Wash.), 160 Pac. 960.

Drawee is not a holder within the meaning of the term. *Nat. Bank of Commerce of Seattle v. Seattle Nat. Bank*, — Wash. —, 187 Pac. 342.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Hudson v. Repton St. Bank* (1917), 75 So. 695.

*Colorado*.—*Marks v. Munson* (1915), 149 Pac. 440; *First Nat. Bank of Denver v. Cripple Creek Bank* (1917), 163 Pac. 1134.

*Connecticut*.—*Hopkins v. Merrill* (1907), 79 Conn. 626, 66 Atl. 174.

*Florida*.—*Worley v. Johnson* (1910), 53 So. 542; *Hough v. State Bank of New Smyrna* (1911), 61 Fla. 290, 55 So. 461; *Donegan v. Dekle Inv. Co.* (1917), 74 So. 11; *Williams v. Peninsular Grocery Co.* (1917), 75 So. 17.

*Idaho*.—*Armstrong v. Sleck* (1908), 14 Ida. 208, 93 Pac. 775.

*Illinois*.—*Graves v. Neeves* (1913), 183 Ill. App. 235.

*Iowa*.—*Allison v. Hollenbeak* (1908), 138 Iowa 479, 114 N. W. 1059; *Porter v. Moles* (1911), 151 Iowa 279, 131 N. W. 23; *Park v. Best* (1916), 157 N. W. 233.

*Kansas*.—*Beachy v. Jones*, 195 Pac. 184.

*Kentucky*.—*Williams v. Paintsville Nat. Bank* (1911), 143 Ky. 781, 137 S. W. 535; *Riordan v. Thornburg* (1917), 198 S. W. 920.

*Louisiana*.—*Atkins v. Dixie Fair Co.* (1914), 65 So. 762; *Farmers & Merchants Bank v. Davis* (1919), 80 So. 713.

*Maryland*.—*Burke v. Smith*, 111 Md. 624, 75 Atl. 114.

*Massachusetts*.—*Leonard v. Draper*, 187 Mass. 536, 73 N. E. 64; *Wolfboro Loan & Banking Co. v. Rollins* (1907), 195 Mass. 323; *Demelman v. Brazier* (1908), 198 Mass. 458, 84 N. E. 856; *State Bank & Trust Co. v. Evans* (1900), 198 Mass. 11; *Dexter v. Fuller* (1914), 217 Mass. 219; *Lankefsky v. Raymond* (1914), 104 N. E. 489.

*Minnesota*.—*State v. Merchants Nat. Bank of St. Paul*, 177 N. W. 135.

*Missouri*.—*Nat. Bank of Rolla v. First Nat. Bank of Salem* (1910), 141 Mo. 719, 125 S. W. 513; *People's Bank v. Baker* (Mo. App.), 193 S. W. 632.

*Nevada*.—*Jensen v. Wilslef* (1913), 132 Pac. 16.

*New Jersey*.—*Mackintosh v. Gibbs* (1909), 79 N. J. L. 40, 74, Atl. 708; *Morris Co. Brick Co. v. Austin* (1910), 75 Atl. 550.

*New York*.—*Packard v. Windholz*, 84 N. Y. Supp. 666, 88 A. D. 365, affirmed 180 N. Y. 549; *Gardner v. Pitcher* (1905), 109 A. D. 106; *First Nat. Bank of the City of Brooklyn v. Gridley* (1906), 112 A. D. 398, 98

N. Y. Supp. 445; *Oriental Bank v. Gallo*, 98 N. Y. Supp. 561, 112 A. D. 360; *Williamsburg Tr. Co. v. Tum Suden* (1907), 120 A. D. 518, 105 N. Y. Supp. 335; *Horowitz v. Wollowitz* (1908), 59 Misc. 520, 110 N. Y. Supp. 972; *Gilpin v. Savage* (1908), 60 Misc. 605, 112 N. Y. Supp. 802; *Abramowitz v. Abramowitz* (1908), 113 N. Y. Supp. 798; *Bruck v. Lambeck* (1909), 118 N. Y. Supp. 494, 63 Misc. Rep. 117; *Klarv. Kostink* (1909), 119 N. Y. Supp. 683; *New York Produce Ex. Bank v. Twelfth Ward Bank* (1909), 135 A. D. 52, 119 N. Y. Supp. 988; *Gilpin v. Savage* (1911), 201 N. Y. 167, 94 N. E. 656; *Blanchard v. Blanchard* (1911), 201 N. Y. 134, 94 N. E. 630; *Yonkers Nat. Bank v. Mitchell* (1913), 141 N. Y. Supp. 128; *First Nat. Bank of Binghamton v. Baker* (1914), 148 N. Y. Supp. 352, 163 A. D. 72; *Baruck v. Buckley* (1915), 151 N. Y. Supp. 853; *Union Bank v. Sullivan*, 214 N. Y. 332, 108 N. E. 558; *Curtis v. Davidson*, 215 N. Y. 395, 109 N. E. 281.

*North Carolina*.—*State Bank of Chicago v. Carr* (1902), 130 N. Car. 479; *Sedbury v. Duffy* (1912), 158 N. Car. 432; *Sykes v. Everett* (1914), 167 N. C. 600; 83 S. E. 585; *Edwards v. Jefferson Standard Life Ins. Co.* (1917), 92 S. E. 695.

*North Dakota*.—*Farquhar Co. v. Higham* (1907), 16 N. Dak. 106, 112 N. W. 657; *Sawyer State Bk. v. Sutherland*, 36 N. D. 493, 162 N. W. 696.

*Ohio*.—*Dollar Sav. Bank v. Barberton Pottery Co.* (1907), 117 Ohio Dec. 539; *Rockfield v. First Nat. Bank of Springfield* (1907), 77 Ohio St. 311, 83 N. E. 392.

*Pennsylvania*.—*Helfrich v. Snyder*, 112A 749.

*Oklahoma*.—*Cherokee Nat. Bank v. Union Trust Co.*, 33 Okla. 342, 125 Pac. 464; *Mangold & Glandt Bk. v. Utterback* (1916), 160 Pac. 713.

*Oregon*.—*First Nat. Bank of Cottage Grove v. Bank of Cottage Grove* (1911), 59 Ore. 388, 117 Pac. 293; *Peterson v. Thompson* (1915), 78 Ore. 158, 151 Pac. 721.

*Pennsylvania*.—*Savings Inst. of the City of Williamsport v. Folk* (1909), 38 Pa. Super Ct. 54; *In re Young's Estate* (1912), 234 Pa. 287, 83 Atl. 201; *Weiskucker v. Connelly* (1917), 100 Atl. 965.

*South Dakota*.—*Astoria State Bank v. Markwood* (1917), 161 N. W. 815.

*Tennessee*.—*Farmers & Merchants Bank v. Bank of Rutherford* (1905), 115 Tenn. 64, 88 S. W. 939; 112 Am. St. Rep. 817; *Figures v. Fly* (1917), 193 S. W. 117.

*Texas*.—*Prudential Life Ins. Co. v. Smyer* (1916), 183 S. W. 825.

*Washington*.—*Hillman v. Stanley* (1909), 56 Wash. 320, 105 Pac. 816; *Gleeson v. Lichty* (1911), 62 Wash. 656, 114 Pac. 518; *Fidelity Nat. Bank v. Hosea* (Wash.), 160 Pac. 960; *Natl. Bank of Commerce of Seattle v. Seattle Natl. Bank*, 187 Pac. 342.

*West Virginia*.—*Rusmisseil v. White Oak Stave Co.* (1917), 92 S. W. 672.

*United States*.—*Willard v. Crook* (1903), 21 App. D. C. 237,

**§ 67. Liability of indorser where paper negotiable by delivery.** Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.<sup>1. 1a</sup>

See text, § 123.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama.*—Long v. Givin (1919), 80 So. 440.

*Kentucky.*—Riordan v. Thornburg (1917), 198 S. W. 920.

*Louisiana.*—Parker v. Guillot (1907), 118 La. 223.

*Michigan.*—Ensign v. Fogg (1913), 143 N. W. 82.

*New York.*—Williamsburg Tr. Co. v. Tum Suden (1907), 120 A. D. 518, 105 N. Y. Supp. 335.

*Ohio.*—Dollar Sav. Bk. v. Barberton Pottery Co. (1907), 117 Ohio Dec. 539.

*Texas.*—First Nat. Bk. of Garner v. Smith (1916), 183 S. W. 862.

*Washington.*—Gleeson v. Lichty (1911), 62 Wash. 656, 114 Pac. 518.

**§ 68. Order in which indorsers are liable.** As respects one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.<sup>1. 1a</sup>

See text, § 123.

Cross sections: 64-12, 109, 120-4, 63.

The Illinois statute substitutes for the last sentence the following: "All parties jointly liable on a negotiable instrument are deemed to be jointly and severally liable."

Corresponding provision of English Bills of Exchange Act: See 32 (5).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Indorsers are jointly and severally liable. *Bavarian Brewing Co. v. Sobocienski*, — Del. Super. —, 109 Atl. 55.

Joint payees become joint indorsers and notice to one binds him even though others are discharged. *Williams v. Paintsville Nat. Bank*, 143 Ky. 781, 137 S. W. 535, Ann. Cas. 1912D, 350.

Agreement as to liability may be inferred from circumstances. *Weeks v. Parsons*, 176 Mass. 570, 58 N. E. 157.



In suit between indorsers oral agreements as to liability may be shown. *Shea v. Vahey*, 215 Mass. 80, 102 N. E. 119.

Effect of notice of dishonor to one of two joint indorsers. *Eaves v. Keeton* (Mo. App.), 193 S. W. 629.

Controversy between indorsers is no defense against holder's claim. *State Bank v. Huffman*, 100 Neb. 396, 160 N. W. 115.

Action on implied promise of indemnity between indorsers. *Morgan v. Thompson*, 72 N. J. Law 244, 62 Atl. 410.

Written or parol evidence admissible between accommodation indorsers. *Wilson v. Hendee*, 74 N. J. Law 640, 66 Atl. 413.

Application as to renewal of note after negotiable instruments law. *Schneider v. Mueller*, 82 N. J. Law 503, 81 Atl. 863.

Parol evidence between drawer of accepted bill and anomalous indorser. *Haddock, Blanchard & Co. v. Haddock*, 192 N. Y. 499, 85 N. E. 682.

Parol evidence to show that joint indorsers are guarantors. *Hodgens v. Jennings*, 148 App. Div. 879, 133 N. Y. Supp. 584.

Common interest in corporation whose note was indorsed affects contribution recoverable. *Strasburger v. Meyer-Strasburger Co.*, 167 App. Div. 198, 152 N. Y. Supp. 757.

Contribution by surety indorser makes notice of dishonor necessary. *Bennett v. Kistler*, 163 N. Y. Supp. 555.

Declaration by prior indorser in suit against a subsequent one must aver an agreement as to liability other than in order of indorsement. *Lynch v. Loftin*, 153 N. C. 270, 69 S. E. 143.

Parol evidence admissible to show liability as between indorsers. *Hunter v. Harris*, 63 Ore. 505, 127 Pac. 786.

As between indorsers parol evidence admissible to show agreement as to order of liability. *Noble v. Beeman-Spaulding Co.*, 65 Ore. 63, 131 Pac. 1006.

Plaintiff may recover where he indorsed after defendant who indorsed before delivery to payee. *Cohn v. Hitt*, 133 Tenn. 466, 132 S. W. 235.

Oral promise between accommodation indorsers is admissible. *Handsaker v. Pederson*, 71 Wash. 218, 128 Pac. 230.

Circumstances to show accommodation indorser's liability other than in the inverse order of indorsement. *Plumley v. First Nat. Bank*, 76 W. Va. 635, 87 S. E. 94.

Liability of prior indorsers to subsequent indorsers who paid note. *In re McCord*, 174 Fed. 72.

Evidence as to agreement of defendant indorser as to payment of renewal notes. *Goldman v. Goldberger*, 208 Fed. 877, 126 C. C. A. 35.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Delaware*.—*Bavarian Brewing Co. v. Sobocienski*, 109 Atl. 55.

*Florida*.—*Baumeister v. Kuntz*, 53 Fla. 340, 42 So. 886.

*Illinois*.—*Trego v. Estate of Cunningham*, 267 Ill. 367, 108 N. E. 350.

*Kentucky*.—*First Nat. Bk. v. Bickel* (1911), 143 Ky. 754, 137 S. W. 790; *Williams v. Paintsville Nat. Bk.* (1911), 143 Ky. 781, 137 S. W. 535, Ann. Cas. 1912D, 350.

*Louisiana.*—Parker v. Guillot (1907), 118 La. 223.

*Massachusetts.*—Weeks v. Parsons, 176 Mass. 570, 58 N. E. 157; Bank of America v. Wilson (1904), 186 Mass. 214; Bamford v. Boynton (1909), 200 Mass. 560, 86 N. E. 900; Enterprise Brewing Co. v. Canning (1911), 210 Mass. 285; Shea v. Vahey (1913), 215 Mass. 80, 102 N. E. 119.

*Michigan.*—Ensign v. Fogg (1913), 143 N. W. 82; Butterfield v. Reynolds (1917), 163 N. W. 86.

*Missouri.*—Eaves v. Keeton (1917), 193 S. W. 629.

*Nebraska.*—State Bank v. Huffman, 100 Neb. 396, 160 N. W. 115.

*New Jersey.*—Morgan v. Thompson (1905), 72 N. J. L. 244, 62 Atl. 410; Wilson v. Hendee (1907), 74 N. J. L. 640, 66 Atl. 413; Morris Co. Brick Co. v. Austin (1910), 75 Atl. 550; Schneider v. Mueller (1911), 82 N. J. L. 503, 81 Atl. 863; Nat. Newark Banking Co. v. Sweeney (1916), 88 N. J. Law 140, 96 Atl. 86.

*New York.*—State Bank v. Kahn (1906), 49 Misc. 500, 98 N. Y. Supp. 858; Haddock, Blanchard & Co. v. Haddock (1908), 192 N. Y. 499, 85 N. E. 682, 103 N. Y. Supp. 584; George v. Bacon (1910), 123 N. Y. Supp. 103, 138 A. D. 208; Hodgens v. Jennings (1912), 148 A. D. 879, 133 N. Y. Supp. 584; Myer v. Strasburger & Co. (1915), 152 N. Y. Supp. 757, 167 A. D. 198; Bennett v. Kistler, 163 N. Y. Supp. 555.

*North Carolina.*—Lynch v. Loftin (1910), 153 N. Car. 270, 69 S. E. 143.

*North Dakota.*—Harris v. Jones (1912), 23 N. Dak. 488, 136 N. W. 1080.

*Oregon.*—Hunter v. Harris (1912), 63 Ore. 505, 127 Pac. 786; Noble v. Beeman-SpaULDing-Woodward Co. (1913), 65 Ore. 63, 131 Pac. 1006.

*Tennessee.*—Cohn v. Hitt (1916), 133 Tenn. 466, 182 S. W. 235; Merimon v. Parkey (1917), 191 S. W. 327.

*West Virginia.*—Plumley v. First Nat. Bank, 76 W. Va. 635, 87 S. E. 94.

*Washington.*—Handsaker v. Pederson, 71 Wash. 218, 128 Pac. 230.

*United States.*—In re McCord (1909), 174 Fed. 72; Goldman v. Goldberger (1913), 208 Fed. 877, 126 C. C. A. 35.

§ 69. **Liability of agent or broker.** Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 115, of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.<sup>1. 1a</sup>

See text, § 123.

Section 115 was "Section 65" in original New York act by mistake.

In Illinois a new section is interpolated at this place as 69a, which reads as follows: "Whenever any bill of exchange drawn or indorsed within this state and payable without this state is duly protested for non-

acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay such bill at the current rate of exchange and with legal interest from the time such bill ought to have been paid until paid, together with the costs and charges of protest, and on bills payable in the United States in case suit has to be brought thereon and on bills payable without the United States with or without suit 5 per cent. damages in addition."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Notes admissible where genuineness of signature not disputed. *Dean v. Vice*, — Mass. —, 124 N. E. 673.

Parol evidence not admissible to relieve a broker who has indorsed. *People's Bank v. Baker* (Mo. App.), 193 S. W. 632.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Massachusetts*.—*Cheney v. Taber* (1915), 108 N. E. 1072; *Dean v. Vice*, 124 N. E. 673.

*Missouri*.—*People's Bank v. Baker* (Mo. App.), 193 S W. 632.

## ARTICLE VI.

### PRESENTMENT FOR PAYMENT.

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| <p>§ 70. Effect of want of demand on principal debtor.</p> <p>71. Presentment where instrument is not payable on demand.</p> <p>72. What constitutes a sufficient presentment.</p> <p>73. Place of presentment.</p> <p>74. Instrument must be exhibited.</p> <p>75. Presentment where instrument payable at bank.</p> <p>76. Presentment where principal debtor is dead.</p> <p>77. Presentment to persons liable as partners.</p> <p>78. Presentment to joint debtors.</p> <p>79. When presentment not required to charge the drawer.</p> | <p>§ 80. When presentment not required to charge the indorser.</p> <p>81. When delay in making presentment is excused.</p> <p>82. When presentment may be dispensed with.</p> <p>83. When instrument dishonored by non-payment.</p> <p>84. Liability of persons secondarily liable, when instrument dishonored.</p> <p>85. Time of maturity.</p> <p>86. Time; how computed.</p> <p>87. Rule where instrument payable at bank.</p> <p>88. What constitutes payment in due course.</p> |
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Sections 70 to 88 above are the sections used by the commissioners.

See table of corresponding sections of the law in the various states and territories beginning on page 261.

**§ 70. Presentment for payment—Effect on parties.** Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.<sup>1, 1a</sup>

See text, § 156.

Cross sections: 61, 66, 82-3, 89, 73, 75, 64-1, 109, 82-3.

In Illinois the words "except in case of bank notes" are interpolated after the words "primarily liable on the instrument."

The Wisconsin act (§ 1678) omits that part of the first sentence following the words "primarily liable on the instrument."

Kansas, New York and Ohio add the words "and has funds there available for that purpose" after the words "at maturity."

Corresponding provisions of English Bills of Exchange Act: Sec. 52 (1), (2); 45, 87 (2); 87 (1).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

If payment awaits holder he forfeits cost of collection if he does not present it. *Moore v. Alton*, 196 Ala. 158, 70 So. 681.

Pleading. *Florence Oil Co. v. First Nat. Bank*, 38 Colo. 119, 88 Pac. 182.

Pleading—When payable at a particular place. *Shaw v. Newton*, 5 Del. 19, 90 Atl. 465.

Holder of collateral note should make presentment. *State Bank of Clinton v. Parkhurst*, 155 Ill. App. 101.

No demand necessary as to one primarily liable on note payable on demand. *Lebanon State Bank v. Garber*, — Kan. —, 181 Pac. 572.

Presentment for payment unnecessary as to person primarily liable, although made payable at a particular place. *Farmers' Nat. Bank v. Venner*, 192 Mass. 531, 78 N. E. 540.

Presentment on demand note. *United States Nat. Bank of Red Lodge v. Shupak*, 54 Mont. 542.

Where maker and indorsers liable collectively presentment not necessary. *Union Bank v. Sullivan*, 214 N. Y. 332, 108 N. E. 558.

Indorser secured by mortgage entitled to presentment and notice. *First Nat. Bank v. Baker*, 163 App. Div. 72, 148 N. Y. Supp. 372.

Also forfeits damages. *Gordon v. Benguiat*, 95 Misc. Rep. 132, 159 N. Y. Supp. 1.

Absence of proof of presentment for payment. *O'Kane v. North American Distilling Co.*, 171 N. Y. S. 275.

Demand note drawing interest needs no presentment as between original parties. *Shuman v. Citizens Bank*, 27 N. D. 599, 147 N. W. 388, L. R. A. 1915A, 728.

Failure to present before bank fails. *Binghamton Pharmacy v. First Nat. Bank*, 131 Tenn. 711, 176 S. W. 1038.

Presentment where whole sum due for non-payment of interest. *Galbraith v. Shepard*, 43 Wash. 698, 86 Pac. 1113.

No place of payment named, payable at residence or place of business. *Bardsley v. Washington Mill Co.*, 54 Wash. 553, 103 Pac. 822.

Demand note bearing interest—effect as to immediate or early demand. *Murray v. Third Nat. Bank*, 234 Fed. Rep. 481, 148 C. C. A. 247.

Not necessary to present to maker though payable at a particular place. *Gordon v. Kerr*, 25 Sess. Cas. 570 (Scotland).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Moore v. Alton*, 196 Ala. 158, 70 So. 681; *Hall v. First Nat. Bk. of Crossville* (1916), 72 So. 171.

*California*.—*Nichols v. Asbeck* (1919), 178 Pac. 705.

*Colorado*.—*Florence O. & R. Co. v. First Nat. Bk.* (1906), 38 Colo. 119, 88 Pac. 182; *Sykes v. Krum* (1911), 49 Colo. 560, 113 Pac. 1003.

*Delaware.*—Shaw v. Newton, 5 Del. 19, 90 Atl. 465.

*Florida.*—Worley v. Johnson (1910), 53 So. 542; Baumeister v. Kurtz, 53 Fla. 340, 42 So. 886.

*Illinois.*—State Bk. of Clinton v. Parkhurst (1910), 155 Ill. App. 101; First Nat. Bk. of Lincoln v. Sandmeyer (1911), 164 Ill. App. 98; Selree v. Thomas (1911), 166 Ill. App. 427.

*Kansas.*—The N. E. Nat. Bk. of Kansas City, Mo. v. Dick (1911), 84 Kans. 252, 114 Pac. 378; Lebanon State Bank v. Garber, 181 Pac. 572.

*Kentucky.*—Fritts v. Kirchdorfer (1910), 124 S. W. 882; Williams v. Paintsville Nat. Bk. (1911), 143 Ky. 781, 137 S. W. 535; Prov. Mining Co. v. Glass Bros. (1918), 201 S. W. 308.

*Massachusetts.*—Demelman v. Brazier (1908), 198 Mass. 458, 84 N. E. 856; Farmers Nat. Bk. v. Venner (1906), 192 Mass. 531, 78 N. E. 540.

*Montana.*—U. S. Nat. Bank of Red Lodge v. Shupak (1918), 54 Mont. 542.

*New York.*—Badt v. Miller (1912), 135 N. Y. Supp. 13, 150 A. D. 920; Beall v. Russell (1912), 134 N. Y. Supp. 633; Bennett v. Kislser (1917), 163 N. Y. Supp. 555; Cohen v. Chelsea Ex. Bk. of N. Y. (1917), 164 N. Y. Supp. 75; Ger.-Am. Bk. v. Milliman (1900), 65 N. Y. Supp. 242, 31 Misc. 87; Gilpin v. Savage (1908), 60 Misc. 605, 112 N. Y. Supp. 802; Gilpin v. Savage (1911), 201 N. Y. 167, 94 N. E. 656; Hyman v. Doyle (1907), 53 Misc. 597, 103 N. Y. Supp. 778; O'Brannon J. W. Co. v. Curran (1908), 129 A. D. 90, 113 N. Y. Supp. 359; State of N. Y. Nat. Bk. v. Kennedy (1911), 130 N. Y. Supp. 412, 145 A. D. 669; Gordon v. Benguiat, 159 N. Y. Supp. 1, 95 Misc. Rep. 132; Union Bk. of Brooklyn v. Sullivan (1915), 108 N. E. 558, 214 N. Y. 332; Van Vliet v. Kanter (1910), 124 N. Y. Supp. 63; First Nat. Bank v. Baker, 163 A. D. 72, 148 N. Y. Supp. 372; O'Kane v. North American Distilling Co. (1918), 171 N. Y. Supp. 275.

*North Carolina.*—Myers Co. v. Battle (1915), 86 S. E. 1034; Perry Co. v. Taylor (1908), 148 N. Car. 362; Rouse v. Wooten (1906), 140 N. Car. 557, 53 S. E. 430, 111 Am. St. 875; Walter v. Earnhart (1916), 88 S. E. 753.

*North Dakota.*—Nelson v. Grondahl (1904), 13 N. Dak. 363, 100 N. W. 1093; Sawyer State Bk. v. Sutherland (1917), 162 N. W. 696; Shuman v. Citizens Bank, 27 N. Dak. 599, 147 N. W. 388, L. R. A. 1915A, 728.

*Oregon.*—Hodges v. Blaylock (1916), 161 Pac. 396.

*Pennsylvania.*—In re Aldred's Estate (1911), 229 Pa. 627; DeWees v. Middle States C. & I. Co. (1915), 93 Atl. 958; First Nat. Bk. v. McBride (1911), 230 Pa. 261; Dominion Trust Co. v. Hildner, 243 Pa. 253, 90 Atl. 69.

*South Carolina.*—Farmers Bk. v. Crawford (1916), 88 S. E. 13.

*South Dakota.*—Scribner State Bk. v. Ransom (1915), 151 N. W. 1023.

*Tennessee.*—Pharmacy v. First Nat. Bk. (1915), 131 Tenn. 711, 176 S. W. 1038; Waterhouse v. Sterchi Bros. (1918), 201 S. W. 150.

*Washington*.—Bradshaw v. Chaffee (1916), 90 Wash. 404, 156 Pac. 388; Bardsley v. Washington Mill Co. (1909), 54 Wash. 553, 103 Pac. 822; Galbraith v. Shepard (1906), 43 Wash. 698, 88 Pac. 1113; Hillman v. Stanley (1909), 56 Wash. 320, 105 Pac. 816.

*Wisconsin*.—Schoenwetter v. Schoenwetter (1916), 164 Wis. 131, 159 N. W. 737; Welsch v. Kukuk (1906), 128 Wis. 419, 107 N. W. 301.

*United States*.—Grandison v. Robertson (1916), 231 Fed. 785; In re Swift (1901), 106 Fed. 65 (Dt. Mass.); Murray v. Third Nat. Bk. of St. Louis (1916), 234 Fed. 481, 148 C. C. A. 247.

§ 71. Presentment where instrument is not payable on demand; (where payable on demand). Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.<sup>1</sup> <sup>1a</sup>

See text, § 159.

Cross sections: 85, 193, 144, 186, 7-1, 73, 72-2, 82-3, 75.

The Nebraska act omits the remainder of this section after the words, "time after its issue."

In New Hampshire the following is added: "Upon a promissory note payable on demand, a demand made at the expiration of sixty days from the date thereof, without grace, or at any time within that term, shall be deemed to be made within a reasonable time; and any act, neglect or other thing, which by the provisions of this act is deemed equivalent to a presentment and demand on a note payable at a fixed time, or which would dispense with such presentment and demand, if it occurs at or within the sixty days, shall be a dishonor thereof, and shall authorize the holder of the note to give notice of the dishonor to the indorser as upon a presentment to the promisor, and his neglect or refusal to pay the same. No presentment of the note to the promisor and demand for payment shall charge the indorser unless made on or before the last day of the sixty days."

In South Dakota a new section fixes the maturity of demand instruments. This is set out under section 193.

The Vermont act omits the following words, "the last negotiation thereof," and the following words are substituted, "its issue in order to charge the drawer."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Failure of bank cashier to present check for payment on day of receiving same unreasonable delay where he knows bank's failing condition. Babcock v. Rocky Ford, 25 Colo. App. 312, 137 Pac. 899.

Indorsement of note after maturity makes it payable on demand and presentment for payment must be within reasonable time. *Sheffield v. Cleland*, 19 Idaho 612, 115 Pac. 20.

Indorser discharged when check not presented within reasonable time after issue. *First Nat. Bank of Chadwick v. Mackey*, 157 Ill. App. 408.

Check forwarded for collection in usual commercial route is sufficient. *Sublette Exch. Bank v. Fitzgerald*, 168 Ill. App. 240.

Unreasonable delay in presentment discharges indorser. *Swift & Co. v. Miller*, 62 Ind. App. 312, 113 N. E. 447.

Presentment in usual commercial route is sufficient although a more direct presentment could have been made. *Plover Savings Bank v. Moodie*, 135 Iowa 685, 110 N. W. 29, 113 N. W. 476.

Certificate of deposit payable on demand must be presented within reasonable time after issue. *Anderson v. First Nat. Bank*, 144 Iowa 251, 122 N. W. 918.

Presentment for payment of demand note. *American Nat. Bank v. Patterson*, — La. —, 83 So. 218.

Presentment of demand instrument must be in reasonable time and holder has burden of proving same. *Merritt v. Jackson*, 181 Mass. 69, 62 N. E. 987.

Burden of proof of notice of dishonor is on holder. *First Nat. Bank v. Star Watch Case Co.*, 187 Mich. 224, 153 N. W. 722.

Loan association by-law as affecting presentment for payment. *Hill Savings, Etc., Club v. Barnowitz* (N. J.), 97 Atl. 28.

Presentment for payment must be within reasonable time. *Commercial Nat. Bank v. Zimmerman*, 185 N. Y. 210, 77 N. E. 1020.

Burden is upon indorser to prove that presentment was unreasonably delayed. *German-American Bank v. Mills*, 99 App. Div. 312, 91 N. Y. Supp. 142.

Presentment within ten months sufficient to hold indorser. *Schlesinger v. Schultz*, 110 App. Div. 356, 96 N. Y. Supp. 383.

Evidence as to custom of banks in handling indorsed demand notes admissible as to reasonable time. *State of New York Nat. Bank v. Kennedy*, 145 App. Div. 669, 130 N. Y. Supp. 412.

Presentment for payment not necessary. *Van Buren v. Wensley*, 169 N. Y. S. 789.

It was question for jury whether note in bank's possession for presentment on date due. *Nickell v. Bradshaw*, — Ore. —, 183 Pac. 12.

Demand note should be presented at place of payment and notice of non-payment given to bind indorser. *Davis Nat. Bank of Piedmont v. Knight*, — W. Va. —, 103 S. E. 482.

Presentment of demand draft within reasonable time after last indorsement sufficient. *Columbian Banking Co. v. Bowen*, 134 Wis. 218, 114 N. W. 451.

Insolvency of maker does not excuse presentment for payment as to indorser. *Grandison v. Robertson*, 231 Fed. Rep. 785, 145 C. C. A. 605.

<sup>1a</sup> The following is a complete list of the cases arranged alphabetically by states, where this section has been construed:

*Colorado*.—*Babcock v. City of Rocky Ford* (1914), 25 Colo. App. 312, 137 Pac. 899.

*Connecticut*.—*Hampton v. Miller*, 78 Conn. 267, 61 Atl. 952.

*Idaho*.—*Sheffield v. Cleland* (1911), 19 Ida. 612, 115 Pac. 20.



*Illinois*.—First Nat. Bk. of Chadwick v. Mackey (1910), 157 Ill. App. 408; Greer v. Downing (1912), 176 Ill. App. 355; Sublette Exch. Bk. v. Fitzgerald, 168 Ill. App. 240.

*Indiana*.—Swift & Co. v. Miller, 62 Ind. App. 312, 113 N. E. 447.

*Iowa*.—Anderson v. First Nat. Bk. of Chariton (1909), 144 Iowa 251, 122 N. W. 918; Citizens Bk. of Pleasantville v. First Nat. Bk. of Pleasantville (1907), 135 Iowa 605, 13 L. R. A. (N. S.) 303, 113 N. W. 481; Plover Savings Bank v. Moodie, 135 Iowa 685, 110 N. W. 29, 113 N. W. 476.

*Louisiana*.—Lewy v. Wilkinson (1914), 64 So. 1003; American Nat. Bank v. Patterson, 83 So. 218.

*Massachusetts*.—Merritt v. Jackson (1902), 181 Mass. 69, 62 N. E. 987; Plymouth County Trust Co. v. Scanlon (1917), 116 N. E. 468.

*Michigan*.—First Nat. Bank v. Star Watch Case Co., 187 Mich. 224, 153 N. W. 722.

*New Jersey*.—Hill Savings & Drawing Club v. Baronowitz (1916), 97 Atl. 28.

*New York*.—Becker v. Horowitz (1909), 114 N. Y. Supp. 161, 61 Misc. 608; Columbia-Knickerbocker Tr. Co. v. Miller (1913), 142 N. Y. Supp. 440; Commercial Nat. Bk. v. Zimmerman (1906), 185 N. Y. 210, 77 N. E. 1020; Congress Brewing Co. v. Habenicht (1903), 83 A. D. 141, 82 N. Y. Supp. 481; German-Am. Bk. v. Milliman (1900), 65 N. Y. Supp. 242, 31 Misc. 87; German-Am. Nat. Bk. v. Mills (1904), 99 A. D. 312, 91 N. Y. Supp. 142; Hussey v. Sutton (1916), 160 N. Y. Supp. 934; McBride v. Illinois Nat. Bk. (1910), 138 A. D. 339; Schlesinger v. Schultz (1905), 10 A. D. 356, 96 N. Y. Supp. 383; Young v. Am. Bk., No. 82 (1904), 44 Misc. 308, 89 N. Y. Supp. 915; Van Buren v. Wensley, 169 N. Y. S. 789; State of New York Nat. Bank v. Kennedy, 130 N. Y. Supp. 412, 145 A. D. 669.

*Oregon*.—Robinson v. Holmes (1910), 57 Oreg. 5, 109 Pac. 754; Nickell v. Bradshaw, 183 Pac. 12.

*Tennessee*.—Am. Nat. Bk. v. Nat. Fertilizer Co. (1911), 125 Tenn. 328, 143 S. W. 597.

*West Virginia*.—Davis Natl. Bank of Piedmont v. Knight, 103 S. E. 482.

*Wisconsin*.—Columbian Banking Co. v. Bowen (1908), 134 Wis. 218, 114 N. W. 451.

*United States*.—Grandison v. Robertson, 231 Fed. Rep. 785, 145 C. A. 605; Murray v. Third Nat. Bk. of St. Louis (1916), 234 Fed. 481.

§ 72. What constitutes sufficient presentment. Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf;

2. At a reasonable hour on a business day

3. At a proper place as herein defined;

4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.<sup>1</sup> <sup>1a</sup>

See text, § 158.

Cross sections: 73, 75, 71.

Corresponding provision of English Bills of Exchange Act: Sec. 45 (3).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Presentation of promissory note for payment by one having it for collection. *Fowler Paper Co. v. Best Jones, Etc., Co.*, 183 Ill. App. 310.

Complaint that presentment not made sooner. *United States Nat. Bank of Red Lodge v. Shupak*, 54 Mont. 542.

Note payable in bank is sufficiently presented if in bank on date of maturity. *Nickell v. Bradshaw*, — *Oreg.* —, 183 Pac. 12.

Presentment at Chicago bank between 3 and 6 o'clock was reasonable hour where they were open for collection of paper refused in clearings of day. *Columbian Banking Co. v. Bowen*, 134 Wis. 218, 114 N. W. 451.

<sup>1a</sup> The following is a complete list of the cases arranged alphabetically by states, where this section has been construed:

*California*.—*Freudenberg v. Lucas* (1918), 175 Pac. 482.

*Colorado*.—*Archuleta v. Johnston* (1912), 127 Pac. 134.

*Illinois*.—*Fowler Paper Co. v. Best Jones, Etc., Co.*, 183 Ill. App. 310.

*Kentucky*.—*Doherty v. First Nat. Bk.* (1916), 186 S. W. 937.

*Massachusetts*.—*In re Poole* (1917), 116 N. E. 227.

*Montana*.—*United States Nat. Bank of Red Lodge v. Shupak*, 54 Mont. 542.

*New York*.—*Columbian-Knickerbocker Trust Co. v. Miller* (1915), 215 N. Y. 191, 109 N. E. 179; *German-Am. Bk. v. Milliman* (1900), 65 N. Y. Supp. 242, 31 Misc. 87; *Gilpin v. Savage* (1908), 60 Misc. 605, 112 N. Y. Supp. 802; *Gilpin v. Savage* (1911), 201 N. Y. 167, 94 N. E. 656; *McBride v. Illinois Nat. Bk.* (1910), 138 A. D. 339.

*North Dakota*.—*Nelson v. Grondahl* (1904), 13 N. Dak. 363, 100 N. W. 1093.

*Ohio*.—*Rockfield v. First Nat. Bk. of Springfield* (1907), 77 Ohio St. 311, 83 N. E. 392.

*Oregon*.—*Hodges v. Blaylock* (1916), 161 Pac. 396; *Nickell v. Bradshaw*, 183 Pac. 12.

*Pennsylvania*.—McNeely Co. v. Bk. of No. Am. (1908), 221 Pa. 588.

*South Dakota*.—Maupin v. Mobridge (1917), 161 N. W. 332.

*Washington*.—North Western Nat. Bk. of Portland v. Pearson (1918), 173 Pac. 730.

*Wisconsin*.—Columbian Banking Co. v. Bowen (1908), 134 Wis. 218, 114 N. W. 451.

**§ 73. Place of presentment.** Presentment for payment is made at the proper place;

1. Where a place of payment is specified in the instrument and it is there presented;

2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.<sup>1, 1a</sup>

See text, § 161.

Cross sections: 75, 7-1, 71, 82-3.

Corresponding provisions of English Bills of Exchange Act: Secs. 45 (4) (a), 45 (4) (b), 45 (4) (c), 45 (4) (d).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Note payable at First Nat. Bank and dated at Hornell, N. Y., is properly presented for payment to First Nat. Bank of Hornell, N. Y. *Finch v. Calkins*, 183 Mich. 298, 149 N. W. 1037.

Note payable at bank is properly presented for payment at the bank although it is in hands of receiver and closed. *Schlesinger v. Schultz*, 110 App. Div. 356, 96 N. Y. Supp. 383.

Note payable at branch office is not presented for payment when presented at principal office. *Ironclad Mfg. Co. v. Sackin*, 129 App. Div. 555, 114 N. Y. Supp. 43.

Waiver of notice of dishonor does not waive presentment for payment. *Bear v. Hoffman*, 150 App. Div. 475, 135 N. Y. Supp. 28.

Presentment is sufficient where it is presented to some one connected with store where it is made payable. *Nelson v. Grondahl*, 13 N. D. 363, 100 N. W. 1093.

Possession by bank of note payable at its office is presentment. *Norwood Nat. Bank. v. Piedmont Co. (S. C.)*, 91 S. E. 866.

<sup>1a</sup> The following is a complete list of the cases arranged alphabetically by states, where this section has been construed:

*Colorado*.—*Archuleta v. Johnston* (1912), 127 Pac. 134.

*Florida*.—*Ryan v. State* (1910), 60 Fla. 25, 53 So. 448.

*Illinois*.—*Kewanee Nat. Bk. v. Ladd* (1912), 175 Ill. App. 151; *Stewart v. Soenksen* (1912), 173 Ill. App. 1.

*Kentucky*.—*Doherty v. First Nat. Bk.* (1916), 186 S. W. 937.

*Louisiana*.—*Smith v. Shippers Oil Co.* (1908), 120 La. 640, 45 So. 533.

*Massachusetts*.—*In re Poole* (1917), 116 N. E. 227.

*Michigan*.—*Finch v. Calkins* (1914), 149 N. W. 1037.

*New York*.—*Bear v. Hoffman* (1912), 135 N. Y. Supp. 28, 150 A. D. 475; *Columbia-Knickerbocker Tr. Co. v. Miller* (1915), 215 N. Y. 191, 109 N. E. 179; *Congress Brewing Co. v. Habenicht* (1903), 83 A. D. 141, 82 N. Y. Supp. 481; *German-Am. Bk. v. Milliman* (1900), 65 N. Y. Supp. 242, 31 Misc. 87; *Gilpin v. Savage* (1908), 60 Misc. 605, 112 N. Y. Supp. 802; *Gilpin v. Savage* (1911), 201 N. Y. 167, 94 N. E. 656; *Iron Clad Mfg. Co. v. Sackin* (1908), 110 N. Y. Supp. 161, 114 N. Y. Supp. 43, 129 A. D. 555; *McBride v. Illinois Nat. Bk.* (1910), 138 A. D. 339; *Schlesinger v. Schultz* (1905), 10 A. D. 356, 96 N. Y. Supp. 383.

*North Carolina*.—*Myers Co. v. Bottle*, 170 N. C. 168, 86 S. E. 1034.

*North Dakota*.—*Nelson v. Grondahl* (1904), 13 N. Dak. 363, 100 N. W. 1093.

*South Carolina*.—*Norwood Nat. Bk. v. Piedmont Pub. Co.* (1917), 91 S. E. 866.

*Washington*.—*Bardsley v. Washington Mill Co.* (1909), 103 Pac. 822.

**§ 74. Instrument must be exhibited.** The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.<sup>1. 1a</sup>

See text, § 158.

Cross section: 82-3.

Corresponding provisions in English Bills of Exchange Act: Sec. 52 (4).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Not necessary to allege in pleading that presentment was made or note exhibited. *Church v. Stevens*, 56 Misc. Rep. 572, 107 N. Y. Supp. 310.

Loss of note excuses presentment but notice of dishonor must be given to bind indorser. *Klots v. Silver*, 127 N. Y. Supp. 1090.

Informal talk is not a presentment. *State of New York Nat. Bank v. Kennedy*, 145 App. Div. 669, 130 N. Y. Supp. 412.

When notes were not in readiness for exhibition or surrender, but could not have been exhibited or surrendered it is not a presentment for payment. *Greco v. Lo Monte*, 162 N. Y. Supp. 982.

Calling maker up at place of payment asking what he would do is not sufficient to show waiver of presentment. *Gilpin v. Savage*, 201 N. Y. 167, 94 N. E. 656.

Maker waives exhibition of note by not asking for it and refusing payment. *Hodges v. Blaylock*, 82 Ore. 179, 161 Pac. 396.

<sup>1a</sup> The following is a complete list of the cases arranged alphabetically by states, where this section has been construed:

*California*.—*Freudenberg v. Lucas* (1918), 175 Pac. 482.

*New York*.—*Congress Brewing Co. v. Habenicht* (1903), 83 A. D. 141, 82 N. Y. Supp. 481; *German-Am. Bk. v. Milliman* (1900), 65 N. Y. Supp. 242, 31 Misc. 87; *Church v. Stevens*, 107 N. Y. Supp. 310, 56 Misc. Rep. 572; *Greco v. Lo Monte* (1917), 162 N. Y. Supp. 982; *Klots v. Silver* (1911), 127 N. Y. Supp. 1090; *Gilpin v. Savage*, 201 N. Y. 167, 94 N. E. 656; *McBride v. Illinois Nat. Bk.* (1910), 138 A. D. 339; *State of N. Y. Nat. Bk. v. Kennedy* (1911), 130 N. Y. Supp. 412, 145 A. D. 669.

*North Dakota*.—*Shuman v. Citizen's State Bk. of Rugby* (1914), 147 N. W. 388.

*Oregon*.—*Hodges v. Blaylock*, 82 Ore. 179, 161 Pac. 396.

### § 75. Presentment where instrument payable at bank.

Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.<sup>1</sup> <sup>1a</sup>

See text, § 161.

Nebraska omits the remainder of the section after the words "during banking hours."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Presumption is that presentment was during business hours unless contrary shown. *Archuleta v. Johnston*, 53 Colo. 393, 127 Pac. 134.

If note payable at bank is in bank ready to be delivered it is presentment. *De La Vergne v. Globe Printing Co.*, 27 Colo. App. 308, 148 Pac. 923.

Deposit of money to pay note before close of banking hours is sufficient to render demand earlier in day premature. *German-American Bank v. Milliman*, 31 Misc. Rep. 87, 65 N. Y. Supp. 242.

<sup>1a</sup> The following is a complete list of the cases arranged alphabetically by states, where this section has been construed:

*Colorado*.—*De La Vergne v. Globe Printing Co.*, 27 Colo. App. 308, 148 Pac. 923; *Archuleta v. Johnston*, 53 Colo. 393, 127 Pac. 134.

*Kentucky*.—*Doherty v. First Nat. Bank*, 170 Ky. 810, 186 S. W. 937.

*New York*.—*German-American Bank v. Milliman*, 65 N. Y. Supp. 242, 31 Misc. Rep. 87; *Columbia-Knickerbocker Tr. Co. v. Miller* (1913), 142 N. Y. Supp. 440, 215 N. Y. 191, 156 A. D. 810; *McBride v. Illinois Nat. Bk.* (1913), 183 A. D. 339; *Schlesinger v. Schultz* (1905), 10 A. D. 256, 96 N. Y. Supp. 383.

*Wisconsin*.—*Columbia Banking Co. v. Bowen*, 134 Wis. 218, 114 N. W. 451.

**§ 76. Presentment where principal debtor is dead.** Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence he can be found.<sup>1, 1a</sup>

See text, § 162

Cross sections: 98, 96.

Corresponding provisions of English Bills of Exchange Act: Sec. 45 (7).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Instrument must be exhibited to person from whom payment demanded. *Porter v. East Jordan Realty Co.*, — Mich. —, 177 N. W. 987.

Reasonable diligence as to presentment to administrator. *Reed v. Spear*, 107 App. Div. 144, 94 N. Y. Supp. 1007.

<sup>1a</sup> The following is a complete list of the cases arranged alphabetically by states, where this section has been construed:

*Michigan*.—*Porter v. East Jordan Realty Co.*, 177 N. W. 987.

*New York*.—*Reed v. Spear* (1905), 107 A. D. 144, 94 N. Y. Supp. 1007.

**§ 77. Presentment to persons liable as partners.** Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

See text, § 162.

Corresponding provisions of English Bills of Exchange Act: Sec. 45 (6).

**§ 78. Presentment to joint debtors.** Where there are several persons not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.<sup>1, 1a</sup>

See text, § 162.

In North Carolina the word "parties" is used for "partners." This is likely a clerical error.

Corresponding provisions of English Bills of Exchange Act: Sec. 45 (6).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Demand on one of two joint makers not sufficient to charge indorsers. *State of New York Nat. Bank v. Kennedy*, 145 App. Div. 669, 130 N. Y. Supp. 412.

<sup>1a</sup> The following is a complete list of the cases arranged alphabetically by states, where this section has been construed:

*Colorado*.—*Prior v. Simonson* (1916), 160 Pac. 1035.

*New York*.—*State of N. Y. Nat. Bk. v. Kennedy* (1911), 130 N. Y. Supp. 412, 145 A. D. 669.

*North Dakota*.—*Shuman v. Cit. State Bk. of Rugby* (1914), 147 N. W. 388.

**§ 79. When presentment not required to charge the drawer.** Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.<sup>1, 1a</sup>

See text, § 156.

Cross sections: 114-4, 64-1, 82-3.

Corresponding provisions of English Bills of Exchange Act: Sec. 46 (2), (c).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Presentment of check on which payment stopped not necessary. *Sibree v. Thomas*, 166 Ill. App. 422.

Drawer's lack of funds in hands of drawee does not excuse presentment. *Simonoff v. Granite City Nat. Bank*, 279 Ill. 246, 116 N. E. 636.

Where payment stopped presentment of check not necessary to charge drawer. *Usher v. A. I. Tucker Co.*, 217 Mass. 441, 105 N. E. 360, L. R. A. 1916F, 826.

<sup>1a</sup> The following is a complete list of the cases arranged alphabetically by states, where this section has been construed:

*Alabama*.—Britnell v. Smith (1914), 66 So. 569.

*Illinois*.—Sibree v. Thomas, 166 Ill. App. 422; Simonoff v. Granite City Nat. Bank, 279 Ill. 246, 116 N. E. 636.

*Iowa*.—West Branch State Bk. v. Haines (1907), 135 Iowa 313, 112 N. W. 552.

*Massachusetts*.—Usher v. A. I. Tucker Co., 217 Mass. 441, 105 N. E. 360, L. R. A. 1916F, 826.

*United States*.—In re Swift (1901), 106 Fed. 65 (Dt. Mass.).

§ 80. When presentment not required to charge the indorser. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.<sup>1, 1a</sup>

See text, § 156.

Cross section: 115.

In Illinois everything is omitted after the words: "for his accommodation."

Corresponding provisions of English Bills of Exchange Act: Sec. 46 (2), (d).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Who are indorsers entitled to notice of dishonor. Fletcher v. Sturtevant, — Mass. —, 126 N. E. 428.

Loan made partly for benefit of accommodation indorser. Bergen v. Trimble (Md.), 101 Atl. 137.

Note by president, directors and stockholders liable collectively need not be presented to maker to bind the others as indorsers. Union Bank of Brooklyn v. Sullivan, 214 N. Y. 332, 108 N. E. 558.

Presentation not necessary. Fosdick v. Government Mineral Springs Hotel Co., — Wash. —, 196 Pac. 652.

Where indorsers indirectly benefit by making note they are not accommodation indorsers and presentment must be made. Murray v. Third Nat. Bk., 234 Fed. Rep. 481, 148 C. C. A. 247.

<sup>1a</sup> The following is a complete list of the cases arranged alphabetically by states, where this section has been construed:

*Connecticut*.—Foster v. Balch (1907), 79 Conn. 449.

*Florida*.—Worley v. Johnson (1910), 53 So. 542.

*Maryland*.—Bergen v. Trimble (1917), 130 Md. 559, 101 Atl. 137.



*Massachusetts*.—Fletcher v. Sturtevant, 126 N. E. 428.

*Missouri*.—Overland Auto Co. v. Winters (1915), 180 S. W. 561; Beech v. Roberts (1915), 191 Mo. App. 243, 177 S. W. 1062.

*New York*.—Van Vliet v. Kanter (1910), 124 N. Y. Supp. 63; Union Bank v. Sullivan (1915), 214 N. Y. 332, 108 N. E. 558.

*South Dakota*.—Scribner State Bk. v. Ransom (1915), 151 N. W. 1023.

*United States*.—McDonald v. Luckenbach (1909), 170 Fed. 434, 95 C. C. A. 604; Murray v. Third Nat. Bk. of St. Louis (1916), 234 Fed. 481, 148 C. C. A. 247.

*Washington*.—Fosdick v. Government Mineral Springs Hotel Co., 196 Pac. 652.

**§ 81. When delay in making presentment is excused.** Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.<sup>1a</sup>

See text, § 160.

Cross section: 186.

Corresponding provision of English Bill of Exchange Act: Sec. 46 (1).

<sup>1a</sup> The following is a complete list of the cases arranged alphabetically by states, where this section has been construed:

*Florida*.—Worley v. Johnson (1910), 53 So. 542.

*Kentucky*.—Frazer v. Phoenix Nat. Bk. (1914), 170 S. W. 532.

*New York*.—Columbia-Knickerbocker Tr. Co. v. Miller (1913), 142 N. Y. Supp. 440.

*Wisconsin*.—Aebi v. Bk. of Evansville (1905), 124 Wis. 73, 102 N. W. 329, 68 L. R. A. (N. S.) 964, 109 Am. St. 925.

**§ 82. When presentment may be dispensed with.** Presentment for payment is dispensed with:

1. Where after the exercise of reasonable diligence presentment as required by this act can not be made;
2. Where the drawee is a fictitious person;
3. By waiver of presentment express or implied.<sup>1. 1a</sup>

See text, § 157.

Cross sections: 64-1, 109, 76, 89, 96, 114, 109, 111, 70.

Corresponding provisions of English Bills of Exchange Act: Sec. 46 (2), (a), (b), (c).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Declarations of the indorser calculated to mislead the indorsee and to induce him to omit presentment and notice of dishonor. *Torbert v. Montague*, 38 Colo. 325, 87 Pac. 1145.

Indorser's statements as to liability did not waive presentment and notice. *Worley v. Johnson*, 60 Fla. 295, 53 So. 542, 33 L. R. A. 641.

Circumstances and acts which show a waiver of presentment for payment. *Simonoff v. Granite City Nat. Bank*, 279 Ill. 248, 116 N. E. 636.

Parol evidence to show whether waiver of protest made on demand note long after its issue was as to protest before the waiver or to future protests. *Toole v. Crafts*, 196 Mass. 397, 82 N. E. 22.

Indorser's assurance before maturity that renewal note would be given is waiver of demand and notice. *Sweetser v. Jordan*, 216 Mass. 350, 103 N. E. 905.

Indorsers assured holder of note that maker could not pay at maturity held waiver of presentment. *Bessenger v. Wensel*, 161 Mich. 61, 125 N. W. 750, 27 L. R. A. (N. S.) 516.

Circumstances which do not excuse presentment and notice of dishonor. *Congress Brewing Co. v. Habenicht*, 83 App. Div. 141, 82 N. Y. Supp. 481.

Waiver of notice of presentment is not a waiver of presentment. *Hayward v. Empire State Sugar Co.*, 105 App. Div. 21, 93 N. Y. Supp. 449.

Written admission of defendant indorser that the maker company was insolvent waives presentment and notice of dishonor. *J. W. O'Bannon Co. v. Curran*, 129 App. Div. 90, 113 N. Y. Supp. 359.

If maker of note has no funds in bank presentment to bank for payment is unnecessary. *Myers Co. v. Battle*, 170 N. C. 168, 86 S. E. 1034.

Consent by telephone to extension of time for payment with holder binds indorser and waives presentment. *Moll v. Roth Co.*, 77 Ore. 593, 152 Pac. 235.

Proof of facts excusing presentment or failure to give notice of dishonor are excluded unless pleaded specially. *Galbraith v. Shepard*, 43 Wash. 698, 86 Pac. 1113.

Indorser having possession of note from inception should have presented it for payment. *Glesson v. Lighty*, 62 Wash. 656, 114 Pac. 518.

Indorser instructed holder that he would be at the bank at 4 o'clock to pay raises a question for jury as to waiver of notice of protest. *Second National Bank v. Smith*, 118 Wis. 18, 94 N. W. 664.

Indorser informing holder that neither maker nor he could pay at maturity is a waiver of presentment as to indorser. *In re Swift*, 106 Fed. Rep. 65.

Payment on account by indorser in error rebuts presumption of waiver of statutory requirements. *Mactavish's Judicial Factor v. Michael's Trustees* (1912), Session Cases 425 (Scotland).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—Blomberg v. Self (1919), 80 So. 631.

*Colorado*.—Torbet v. Montague (1906), 38 Colo. 325, 87 Pac. 1145.

*Florida*.—Baumeister v. Kuntz, 53 Fla. 340, 42 So. 886; Worley v. Johnson (1910), 53 So. 542, 33 L. R. A. 641.

*Illinois*.—Simonoff v. Granite City Nat. Bank, 279 Ill. 248, 116 N. E. 636.

*Kansas*.—Nat. Bk. of Webb City v. Dickinson (1918), 171 Pac. 636.

*Kentucky*.—Owensboro Sav. Bk. & Tr. Co.'s Receiver v. Haynes (1911), 136 S. W. 1004.

*Massachusetts*.—Merritt v. Jackson (1902), 181 Mass. 69, 62 N. E. 987; Toole v. Crafts (1906), 193 Mass. 110, 78 N. E. 775, 118 Am. St. 455, 196 Mass. 397, 82 N. E. 22; Hall v. Crane (1913), 213 Mass. 325; Sweetser v. Jordan, 216 Mass. 350, 103 N. E. 905.

*Michigan*.—Bessenger v. Wensel (1910), 161 Mich. 61, 125 S. W. 750, 27 L. R. A. (N. S.) 516.

*New Jersey*.—Jordan v. Reed, 77 N. J. Law 584, 71 Atl. 280.

*New York*.—Congress Brewing Co. v. Habenicht (1903), 83 A. D. 141, 82 N. Y. Supp. 481; Hayward v. Empire State Sugar Co., 93 N. Y. Supp. 449, 105 A. D. 21; Reed v. Spear (1905), 107 A. D. 144, 94 N. Y. Supp. 1007; Gilpin v. Savage (1908), 60 Misc. 605, 112 N. Y. Supp. 802; O'Bannon J. W. Co. v. Curran (1908), 129 A. D. 90, 113 N. Y. Supp. 359; Bear v. Hoffman, 135 N. Y. Supp. 28, 150 A. D. 475; McBride v. Illinois Nat. Bk. (1910), 138 A. D. 339; First Nat. Bk. of Binghampton v. Baker (1914), 148 N. Y. Supp. 372, 163 A. D. 72; Cohen v. Chelsea Exchange Bk. of New York (1917), 164 N. Y. Supp. 75.

*North Carolina*.—Myers Co. v. Battle, 170 N. Car. 168, 86 S. E. 1034.

*Oregon*.—Robinson v. Holmes (1910), 57 Oreg. 5, 109 Pac. 754; Moll v. Roth Co. (1915), 77 Ore. 593, 152 Pac. 235.

*Washington*.—Galbraith v. Shepard (1906), 43 Wash. 698, 86 Pac. 1113; Glesson v. Lighty, 62 Wash. 656, 114 Pac. 518.

*Wisconsin*.—Second Nat. Bank v. Smith, 118 Wis. 18, 94 N. W. 664.

*United States*.—In re Swift (1901), 106 Fed. 65 (Dt. Mass.).

§ 83. When instrument dishonored by non-payment. The instrument is dishonored by non-payment when:

1. It is duly presented for payment and payment is refused or can not be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid.<sup>1a</sup>

See text, § 164.

Cross sections: 64-1, 109, 75, 76, 89, 96.

Corresponding provisions of English Bills of Exchange Act: 47 (1).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Colorado*.—*Archuleta v. Johnston* (1912), 127 Pac. 134.

*Florida*.—*Baumeister v. Kuntz*, 53 Fla. 340, 42 So. 886.

*Massachusetts*.—*Leonard v. Draper* (1905), 187 Mass. 536, 73 N. E. 644.

*New York*.—*German-Am. Bk. v. Milliman* (1900), 65 N. Y. Supp. 242, 31 Misc. 87; *Reed v. Spear* (1905), 107 A. D. 144, 94 N. Y. Supp. 1007.

*Tennessee*.—*Am. Nat. Bk. v. Nat. Fertilizer Co.* (1911), 125 Tenn. 328, 143 S. W. 597.

*Washington*.—*Hillman v. Stanley* (1909), 56 Wash. 320, 105 Pac. 816.

§ 84. Liability of person secondarily liable, when instrument dishonored. Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder.<sup>1,1a</sup>

See text, § 176.

Cross sections: 64-1, 109, 75.

Corresponding provisions of English Bills of Exchange Act: 47 (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

After dishonor and notice to indorser he becomes liable and may set off same against deposit in holder bank which has become insolvent. *Carnegie Trust Co. v. Kistler*, 89 Misc. Rep. 404, 152 N. Y. Supp. 240.

Indorser liability and right of set-off against holder after dishonor and notice to indorser. *Curtis v. Davison*, 215 N. Y. 395, 109 N. E. 481.

After demand and notice indorsers become principal debtors. *Pittsburgh-Westmoreland Coal Co. v. Kerr*, 220 N. Y. 137, 115 N. E. 465.

Payee may sue accommodation indorser before realizing on other security of maker. *Miller v. Levitt* (Mass.), 115 N. E. 431.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Florida*.—*Baumeister v. Kuntz*, 53 Fla. 340, 42 So. 886.

*Massachusetts*.—*Leonard v. Draper* (1905), 187 Mass. 536, 73 N. E. 644; *Miller v. Levitt*, 115 N. E. 431.

*New York*.—*German-American Bank v. Milliman*, 65 N. Y. Supp. 242, 31 Misc. Rep. 87; *Gilpin v. Savage* (1908), 60 Misc. 605, 112 N. Y. Supp. 802; *Bacigalupo v. Parrilli*, 112 N. Y. Supp. 1040; *Carnegie Tr. Co. v. Kistler*, 152 N. Y. Supp. 240, 89 Misc. Rep. 404; *Pittsburg, etc., Coal Co. v. Kerr* (1917), 220 N. Y. 137, 115 N. E. 465; *Curtis v. Davison*, 215 N. Y. 395, 109 N. E. 481.

*South Dakota*.—*Scribner State Bk. v. Ransom* (1915), 151 N. W. 1023.

*Tennessee*.—*Am. Nat. Bk. v. Nat. Fertilizer Co.* (1911), 125 Tenn. 328, 143 S. W. 597.

*Washington*.—*Hillman v. Stanley* (1909), 56 Wash. 320, 105 Pac. 816.

**§ 85. Time of maturity.** Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.<sup>1. 1a</sup>

See text, §§ 56, 159.

Corresponding provisions of English Bills of Exchange Act: 14 (1).

The Arizona act omits the sentence beginning "Instruments falling due," etc.

The words "or becoming payable" have been interpolated after the words "Instruments falling due," in the third sentence in the original act or by amendment in Arkansas, Indiana, Kansas, Minnesota, Missouri, New Jersey, New York and Virginia.

In the Colorado act (Sec. 85) this sentence is omitted, and the following substituted: "Instruments falling due on any day, in any place where any part of such day is a holiday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment during reasonable hours of the part of such day which is not a holiday."

The Iowa act makes this additional provision following section 85:

"Section 198. Days of Grace—demand made on. A demand made on any one of the three days following the day of maturity of the instrument, except on Sunday or a holiday, shall be as effectual as though made on the day on which demand may be made under the provisions of this act, and the provisions of this act as to notice of non-payment, non-acceptance, and as to protest shall be applicable with reference to such demand as though the demand were made in accordance with the terms of this act; but the provisions of this section shall not be construed as authorizing demand on any day after the third day from that on which the instrument falls due according to its face."

In Kansas the words "on becoming payable" are added.

The Kentucky act omits the sentence beginning "Instruments falling due," etc.

In Massachusetts the following amendment has been made: "When the day of maturity falls upon Saturday, Sunday, or a holiday, the instrument is payable on the next succeeding business day which is not a Saturday. Instruments payable on demand may at the option of the holder be presented for payment before 12 o'clock noon on Saturday, when that entire day is not a holiday, provided, however, that no person receiving any check, draft, bill of exchange, or promissory note, payable on demand shall be deemed guilty of any neglect or omission of duty or incur any liability for not presenting for payment or acceptance or collection such check, draft, bill of exchange or promissory note on a Saturday; provided, also, that the same shall be duly presented for payment or acceptance or collection on the next succeeding business day."

In the Massachusetts act (by amendment in 1902), the words "or payable" were inserted after "falling due."

In Massachusetts this section has been modified (Laws 1899, c. 130), as follows: "On all drafts and bills of exchange made payable within this Commonwealth at sight, three days of grace shall be allowed, unless there is an express stipulation therefor to the contrary."

In Minnesota, by amendment in 1917, c. 204, s. 1, the following clause was added to the section, "and if presented after 12 o'clock noon on Saturday, when that entire day is not a holiday, may at the option of the payer be then paid."

In New Hampshire the words "or payable" were inserted after "falling due."

In New York the words "on becoming payable" were added by amendment.

The North Carolina act (Revisal of 1908, sections 2234, 2235) provides that every negotiable instrument is payable at the time fixed therein without grace except that "all bills of exchange payable within the state, at sight, in which there is an express stipulation to that effect, and not otherwise, shall be entitled to days of grace as the same are allowed by the customs of merchants in foreign bills of exchange, payable at the expiration of a certain period after date on sight; provided, that no days of grace shall be allowed on any bill of exchange, promissory note or draft payable on demand."

In North Carolina, said third sentence was stricken out by amendment, Laws 1909, ch. 800, and it was enacted that "there shall be no difference between Saturday and any other secular or business day, as far as negotiable instruments are concerned."

In Rhode Island the words "except sight drafts" have been inserted after the words "every negotiable instrument."

In Vermont all of the third sentence before the words "instruments payable on demand" is omitted.

In Washington, by amendment in 1915, everything is omitted after the second paragraph, and in an additional section (3584) it is provided

that "Where the day or the last day of doing any act herein required or permitted to be done, falls upon Sunday or a holiday, the act may be done on the next succeeding secular or business day."

The Wisconsin act omits the sentence beginning "Instruments falling due," etc.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Judicial notice that negotiable instruments law is in effect in another state. *Gleason v. Thayer*, 87 Conn. 248, 87 Atl. 790, Ann. Cas. 1915B, 1069.

Presumption as to common law days of grace in sister state. *Demelman v. Brazier*, 193 Mass. 588, 79 N. E. 812.

Notice may be given on last day of grace, but action does not arise until next day. *Kennedy v. Thomas* (1894), 2 Q. B. 759.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Connecticut*.—*Gleason v. Thayer*, 87 Conn. 248, 87 Atl. 790, Ann. Cas. 1915B, 1069.

*Massachusetts*.—*Demelman v. Brazier* (1907), 193 Mass. 588, 79 N. E. 812.

*New Jersey*.—*Stanford v. Stanford* (1917), 101 Atl. 388.

§ 86. Time; how computed. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the date of payment.<sup>1</sup> <sup>1a</sup>

See text, § 159.

Corresponding provisions of English Bills of Exchange Act: Sec. 14 (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Note payable twelve months after November 8, 1908, should be presented on November 8, 1909, for payment. *Lewry v. Wilkinson*, 135 La. 105, 64 So. 1003.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Louisiana*.—*Lewry v. Wilkinson*, 135 La. 105, 64 So. 1003

**§ 87. Rule where instrument payable at bank.** Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.<sup>1. 1a</sup>

See text, § 154.

Illinois, Kansas, Nebraska and South Dakota omit this section.

In Minnesota the words "shall not be" are used in place of the word "is."

In Missouri the following has been added at the end of this section: "But where the instrument is made payable at a fixed or determined future time, the order to the bank is limited to the day of maturity only."

In New Jersey the same has been added at the end of the section as set out above in Missouri.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Maker may be discharged if holder fails to present note to bank at maturity where the bank later fails. *New England Nat. Bank v. Dick*, 84 Kan. 252, 114 Pac. 378.

Marking note paid and placing it with maker's paid checks without making entries on bank's books constituted payment. *Nineteenth Ward Bank v. First Nat. Bank*, 184 Mass. 49, 67 N. E. 670.

Depositor at maturity directed cashier to pay note and cashier informed him his note was paid, was payment at time. *Belk v. Capital Fire Ins. Co.*, 100 Neb. 260, 159 N. W. 405.

Orders on bank presented by payees and stamped "Paid Oct. 16, 1916," upon which checks were drawn to payees were not paid where checks not cashed prior to notice of garnishment. *Hanna v. McCrory*, 19 N. M. 183, 141 Pac. 996.

Note payable at a bank was sent there at maturity. Maker phoned bank to pay and charge his account. This was not done and bank failed, but note held paid. *Baldwin's Bank v. Smith*, 215 N. Y. 76, 109 N. E. 138, Ann. Cas. 1917A, 500.

Payment to holder after maturity is payment in due course. *Potter v. Sager*, 171 N. Y. Supp. 438.

Note paid where maker directed bank to pay and charge his account, the maker's deposit being slightly less and the maker making additional deposits the next day which more than covered the note where bank later failed. *Peaslee-Gaulbert Co. v. Dixon*, 172 N. C. 411, 90 S. E. 421.

Effect of note payable in bank as to presentment for payment. *Nickell v. Bradshaw*, — Ore. —, 183 Pac. 12.

Holder does not need to present note to bank where payable to hold the maker liable as original party even though bank fails. *Binghampton Pharmacy v. First Nat. Bank*, 131 Tenn. 711, 176 S. W. 1038.

Requirements as to presentation for payment when note not negotiable. *Peninsula Nat. Bank v. Hans Pederson Co.*, 91 Wash. 621, 158 Pac. 246.

Effect of making note payable at "any bank in Boston." *Carpenter v. National Shawmut Bk.*, 187 Fed. Rep. 1, 109 C. C. A. 55.



that "Where the day or the last day of doing any act herein required or permitted to be done, falls upon Sunday or a holiday, the act may be done on the next succeeding secular or business day."

The Wisconsin act omits the sentence beginning "Instruments falling due," etc.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Judicial notice that negotiable instruments law is in effect in another state. *Gleason v. Thayer*, 87 Conn. 248, 87 Atl. 790, Ann. Cas. 1915B, 1069.

Presumption as to common law days of grace in sister state. *Demelman v. Brazier*, 193 Mass. 588, 79 N. E. 812.

Notice may be given on last day of grace, but action does not arise until next day. *Kennedy v. Thomas* (1894), 2 Q. B. 759.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Connecticut*.—*Gleason v. Thayer*, 87 Conn. 248, 87 Atl. 790, Ann. Cas. 1915B, 1069.

*Massachusetts*.—*Demelman v. Brazier* (1907), 193 Mass. 588, 79 N. E. 812.

*New Jersey*.—*Stanford v. Stanford* (1917), 101 Atl. 388.

§ 86. Time; how computed. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the date of payment.<sup>1, 1a</sup>

See text, § 159.

Corresponding provisions of English Bills of Exchange Act: Sec. 14 (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Note payable twelve months after November 8, 1908, should be presented on November 8, 1909, for payment. *Lewry v. Wilkinson*, 135 La. 105, 64 So. 1003.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Louisiana*.—*Lewry v. Wilkinson*, 135 La. 105, 64 So. 1003

**§ 87. Rule where instrument payable at bank.** Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.<sup>1</sup> *is*

See text, § 154.

Illinois, Kansas, Nebraska and South Dakota omit this section.

In Minnesota the words "shall not be" are used in place of the word "is."

In Missouri the following has been added at the end of this section: "But where the instrument is made payable at a fixed or determined future time, the order to the bank is limited to the day of maturity only."

In New Jersey the same has been added at the end of the section as set out above in Missouri.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Maker may be discharged if holder fails to present note to bank at maturity where the bank later fails. *New England Nat. Bank v. Dick*, 84 Kan. 252, 114 Pac. 378.

Marking note paid and placing it with maker's paid checks without making entries on bank's books constituted payment. *Nineteenth Ward Bank v. First Nat. Bank*, 184 Mass. 49, 67 N. E. 670.

Depositor at maturity directed cashier to pay note and cashier informed him his note was paid, was payment at time. *Belk v. Capital Fire Ins. Co.*, 100 Neb. 260, 159 N. W. 405.

Orders on bank presented by payees and stamped "Paid Oct. 16, 1916," upon which checks were drawn to payees were not paid where checks not cashed prior to notice of garnishment. *Hanna v. McCrory*, 19 N. M. 183, 141 Pac. 996.

Note payable at a bank was sent there at maturity. Maker phoned bank to pay and charge his account. This was not done and bank failed, but note held paid. *Baldwin's Bank v. Smith*, 215 N. Y. 76, 109 N. E. 138, Ann. Cas. 1917A, 500.

Payment to holder after maturity is payment in due course. *Potter v. Sager*, 171 N. Y. Supp. 438.

Note paid where maker directed bank to pay and charge his account, the maker's deposit being slightly less and the maker making additional deposits the next day which more than covered the note where bank later failed. *Peaslee-Gaulbert Co. v. Dixon*, 172 N. C. 411, 90 S. E. 421.

Effect of note payable in bank as to presentment for payment. *Nickell v. Bradshaw*, — Ore. —, 183 Pac. 12.

Holder does not need to present note to bank where payable to hold the maker liable as original party even though bank fails. *Binghampton Pharmacy v. First Nat. Bank*, 131 Tenn. 711, 176 S. W. 1038.

Requirements as to presentation for payment when note not negotiable. *Peninsula Nat. Bank v. Hans Pederson Co.*, 91 Wash. 621, 158 Pac. 246.

Effect of making note payable at "any bank in Boston." *Carpenter v. National Shawmut Bk.*, 187 Fed. Rep. 1, 109 C. C. A. 55.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Colorado*.—*De La Vergne v. Globe Printing Co.* (1915), 149 Pac. 923.

*Kansas*.—*The N. E. Nat. Bk. of Kansas City, Mo. v. Dick* (1911), 84 Kans. 252, 114 Pac. 378.

*Kentucky*.—*Price v. Gatliff's Exrs.* (1908), 110 S. W. 332.

*Massachusetts*.—*Nineteenth Ward Bank v. First Nat. Bank*, 184 Mass. 49, 67 N. E. 670; *Elliott v. Worcester Tr. Co.* (1905), 189 Mass. 542, 75 N. E. 944; *Brown v. First Nat. Bank*, 216 Mass. 298, 103 N. E. 780; *City of Newburyport v. First Nat. Bank*, 216 Mass. 304, 103 N. E. 782.

*Nebraska*.—*Belk v. Capital Fire Ins. Co.*, 100 Neb. 260, 159 N. W. 405.

*New Mexico*.—*Hanna v. McCray*, 19 N. M. 183, 141 Pac. 996.

*New York*.—*Baldwin's Bank v. Smith*, 215 N. Y. 76, 109 N. E. 138, Ann. Cas. 1917A, 500; *Glennan v. Rochester Tr. & Safe Dep. Co.* (1912), 152 A. D. 316; *Heinrich v. First Nat. Bank*, 219 N. Y. 1, 113 N. E. 531, L. R. A. 1917A, 655; *Potter v. Sager*, 171 N. Y. Supp. 438.

*North Carolina*.—*Peaslee-Gaulbert Co. v. Dixon*, 172 N. C. 411, 90 S. E. 421.

*Oregon*.—*Nickell v. Bradshaw*, 183 Pac. 12.

*Tennessee*.—*Pharmacy v. First Nat. Bk.* (1915), 131 Tenn. 711, 176 S. W. 1038.

*Washington*.—*Peninsula Nat. Bank v. Hans Pederson Co.*, 91 Wash. 621, 158 Pac. 246.

*United States*.—*Carpenter v. Nat. Shawmut Bk.* (1911), 187 Fed. Rep. 1, 109 C. C. A. 55.

§ 88. What constitutes payment in due course. Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective<sup>1, 1a</sup>

See text, § 182.

Cross sections: 191, 55, 56, 119.

Corresponding provisions of English Bills of Exchange Act: 59 (1), last paragraph.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Effect of drawer's death where drawee pays without knowledge of death. *Glennan v. Rochester Trust, Etc., Co.*, 209 N. Y. 12, 102 N. E. 537, 52 L. R. A. (N. S.) 302.

Surety's placing amount of note and costs on deposit in bank in name of trustee to be transferred for assignment of judgment when recovered

is not payment of note. *Capitol Nat. Bk. v. Robinson*, 41 Wash. 454, 83 Pac. 1021.

Sale of mortgage securing a demand note for full value is not payment of note. *Glasscock v. Balls*, 24 Q. B. D. 13.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Oneonta Trust & Banking Co. v. Box* (1917), 73 So. 759; *Wade v. Kellen* (1917), 75 So. 970.

*Arkansas*.—*Johnson v. Aylor* (1917), 195 S. W. 4.

*Iowa*.—*Wendt v. Haglestage* (1917), 161 N. W. 455.

*New York*.—*Hoch v. Bernstein* (1917), 164 N. Y. Supp. 113; *Glenan v. Rochester Tr. & Safe Dep. Co.* (1912), 152 A. D. 316, 209 N. Y. 12, 102 N. E. 537, 52 L. R. A. (N. S.) 302; *Potter v. Sager* (1918), 171 N. Y. Supp. 438.

*Washington*.—*Capitol Nat. Bk. v. Robinson* (1906), 41 Wash. 454, 83 Pac. 1021.

## ARTICLE VII.

### NOTICE OF DISHONOR.

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| <p>§ 89. To whom notice of dishonor must be given.<br/>90. By whom given.<br/>91. Notice given by agent.<br/>92. Effect of notice given on behalf of holder.<br/>93. Effect where notice is given by party entitled thereto.<br/>94. When agent may give notice.<br/>95. When notice sufficient.<br/>96. Form of notice.<br/>97. To whom notice may be given.<br/>98. Notice where party is dead.<br/>99. Notice to partners.<br/>100. Notice to persons jointly liable.<br/>101. Notice to bankrupt.<br/>102. Time within which notice must be given.<br/>103. Where parties reside in same place.<br/>104. Where parties reside in different places.</p> | <p>§ 105. When sender deemed to have given due notice.<br/>106. Deposit in postoffice, what constitutes.<br/>107. Notice to subsequent parties, time of.<br/>108. Where notice must be sent.<br/>109. Waiver of notice.<br/>110. Whom affected by waiver.<br/>111. Waiver of protest.<br/>112. When notice dispensed with.<br/>113. Delay in giving notice; how excused.<br/>114. When notice need not be given to drawer.<br/>115. When notice need not be given to indorser.<br/>116. Notice of non-payment where acceptance refused.<br/>117. Effect of omission to give notice of non-acceptance.<br/>118. When protest need not be made; when must be made.</p> |
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Sections 89 to 118 above are the sections used by the commissioners.

See table of corresponding sections of the law in the various states and territories beginning on page 360.

**§ 89. To whom notice of dishonor must be given.**... Except as herein otherwise provided when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.<sup>1. 1a</sup>

See text, § 168.

Cross sections: 97, 108, 70, 66, 76, 96, 83, 84, 64-1, 109, 120-6, 109, 116, 149, 151, 70.

Corresponding provision of English Bills of Exchange Act: Sec. 48.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Notice of dishonor to indorser must be alleged. *Sykes v. Kruse*, 49 Colo. 560, 113 Pac. 1013.

Action after legal notice of dishonor not barred because of prior judgment in his favor for failure to such notice. *Peck v. Easton*, 74 Conn. 456, 51 Atl. 134.

Failure to give notice of non-payment of prior installments does not relieve indorser as to later ones. *Hopkins v. Merrill*, 79 Conn. 626, 66 Atl. 174.

Allegation that note was duly protested is not sufficient. *Gleason v. Thayer*, 87 Conn. 248, 87 Atl. 790, Ann. Cas. 1915B, 1069.

Unreasonable delay in giving notice of dishonor to indorser discharges him. *Swift & Co. v. Miller*, 62 Ind. App. 312, 113 N. E. 447; *Swift & Co. v. Miller*, 62 Ind. App. 312, 113 N. E. 447.

Demand and dishonor must be shown in suit against indorser. *Thompson v. Divine*, — Ind. App. —, 126 N. E. 683.

Allegation and evidence must show demand and notice upon a day which will charge defendant. *Hoyland v. National Bank of Middlesborough*, 137 Ky. 682, 126 S. W. 356.

Notice of dishonor must be given accommodation indorsers. *Young v. Exchange Bank of Kentucky*, 152 Ky. 293, 153 S. W. 444, Ann. Cas. 1915B, 148.

Indorser entitled to notice unless he is officer of bank and as such required to give the notice. *First Nat. Bank v. Bickel*, 154 Ky. 11, 156 S. W. 856.

Plaintiff must allege and prove the giving of notice or that it was waived. *Wisdon & Levy v. Bille*, 120 La. 700, 45 So. 554.

Although presentment is excused notice of dishonor must be given to bind indorser. *Reed v. Spear*, 107 App. Div. 144, 94 N. Y. Supp. 1007.

Pleading where drawer had countermanded payment. *Scanlon v. Wallach*, 53 Misc. Rep. 104, 102 N. Y. Supp. 1090.

When notice of dishonor of a check must be alleged in complaint. *Ewald v. Faulhaber Co.*, 105 N. Y. Supp. 114.

Allegation that due notice of protest of note was given indorser is sufficient. *Sherman v. Ecker*, 59 Misc. Rep. 216, 110 N. Y. Supp. 265.

Drawer discharged by failure to give notice of dishonor for lack of funds. *Bacigalupo v. Parrilli*, 112 N. Y. Supp. 1040.

Judgment for payee of check not sustained where no proof of notice of dishonor to drawer. *Kuflick v. Glasser*, 114 N. Y. Supp. 870.

Notice of dishonor to drawer must be alleged. *Studebaker Sons Co. v. Fuether*, 123 N. Y. Supp. 118.

Plaintiff must allege dishonor to hold indorser. *Kahnweiler v. Salomon*, 177 N. Y. S. 739.

Joint maker, although a surety, is not entitled to notice of dishonor. *Rouse v. Wooten*, 140 N. C. 557, 53 S. E. 430, 111 Am. St. Rep. 875.

Accommodation indorsers are entitled to notice of dishonor. *Perry v. Taylor*, 148 N. C. 362, 62 S. E. 423.

Necessity of notice of dishonor. *Barber v. W. M. Absher Co.*, 175 N. C. 602.

Indorser entitled to notice of non-payment of each installment of note. *Elworthy-Helwick Co. v. Hess*, 9 Ohio App. 200.

Presentment and notice of dishonor must be alleged to charge an indorser. *Robinson v. Holmes*, 57 Ore. 5, 109 Pac. 754.

In suit by motion and notice the latter must make allegations as to notice of protest to bind indorser. *Security Loan & Trust Co. v. Fields*, 110 Va. 827, 67 S. E. 342.

Failure to give notice of dishonor to drawer releases him only when it results in his loss, *Morris-Miller Co. v. Von Pressentin*, 63 Wash. 74, 114 Pac. 912.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Hall v. First Nat. Bank*, 196 Ala. 627, 72 So. 171.

*Arkansas*.—*Bibbs v. Hopper* (1913), 160 S. W. 879.

*California*.—*Wetzel v. Cole* (1917), 165 Pac. 692.

*Colorado*.—*Sykes v. Kruse* (1911), 49 Colo. 560, 113 Pac. 1013.

*Connecticut*.—*Peck v. Easton* (1902), 74 Conn. 456, 51 Atl. 134; *Foster v. Balch* (1907), 79 Conn. 449; *Hopkins v. Merrill* (1907), 79 Conn. 626, 66 Atl. 174; *Cent. Nat. Bank v. Stoddard* (1910), 83 Conn. 330, 76 Atl. 472; *Gleason v. Thayer*, 87 Conn. 248, 87 Atl. 790, Ann. Cas. 1915B, 1069; *Blue Ribbon Garage v. Baldwin* (1917), 101 Atl. 83.

*Florida*.—*Worley v. Johnson* (1910), 53 So. 542; *Baumeister v. Kuntz*, 53 Fla. 340, 42 So. 886.

*Illinois*.—*State Bank of Clinton v. Parkhurst* (1910), 155 Ill. App. 101; *Sublette Ex. Bank v. Fitzgerald* (1912), 168 Ill. App. 240.

*Indiana*.—*Thompson v. Divine*, Ind. App., 126 N. E. 683.

*Kansas*.—*Guaranty Inv. Co. v. Gamble* (1918), 171 Pac. 1152.

*Kentucky*.—*Fritts v. Kirchdorfer* (1910), 124 S. W. 882; *Mechanics & Farmer's Sav. Bank v. Katterjohn* (1910), 137 Ky. 427, 125 S. W. 1071; *Hoyland v. Nat. Bank of Middlesborough* (1910), 137 Ky. 682, 126 S. W. 356; *First Nat. Bank v. Bickel* (1911), 143 Ky. 754, 137 S. W. 790; *Williams v. Paintsville Nat. Bank* (1911), 143 Ky. 781, 137 S. W. 535; *First Nat. Bank v. Bickel*, 154 Ky. 11, 156 S. W. 856; *Frazee v. Phoenix Nat. Bank*, 161 Ky. 175, 170 S. W. 532; *Young v. Exchange Bank of Kentucky*, 152 Ky. 293, 153 S. W. 444, Ann. Cas. 1915B, 148; *Sim v. Citizens Bank* (1917), 191 S. W. 489.

*Louisiana*.—*Wisdon & Levy v. Bille* (1908), 120 La. 700, 45 So. 554.

*Maryland*.—*Lightner v. Roach* (1915), 95 Atl. 62, 126 Md. 474.

*Massachusetts*.—*Commercial Nat. Bank v. Clarke* (1902), 180 Mass. 249; *Bennet v. Tremont Securities Co.* (1915), 108 N. E. 891.

*Missouri*.—*Overland Auto Co. v. Winter* (1915), 180 S. W. 561; *Eaves v. Keeton* (1917), 193 S. W. 629; *Peoples Bank of Ava v. Baker* (1917), 193 S. W. 632.

*New Hampshire*.—*Trafton v. Garnsey* (1916), 99 Atl. 290.

*New Jersey*.—*Battery Park Bank v. Ramsey* (1917), 100 Atl. 51; *Motley v. Darling* (1918), 102 Atl. 853.

*New York.*—Ebling Brewing Co. v. Rheinheimer (1900), 32 Misc. 594, 66 N. Y. Supp. 458; University Press v. Williams (1900), 48 A. D. 188; Mohlman Co. v. McKane (1901), 60 A. D. 546; Kelly v. Theiss (1901), 65 A. D. 146; Fonseca v. Hartman (1903), 84 N. Y. Supp. 131; Am. Ex. Nat. Bank v. Am. Hotel Victoria Co. (1905), 103 A. D. 372, 92 N. Y. Supp. 1006; Reed v. Spear (1905), 107 A. D. 144, 94 N. Y. Supp. 1007; Howard v. Bank of Metropolis (1916), 115 A. D. 326; Scanlon v. Wallach (1907), 102 N. Y. Supp. 1090, 53 Misc. 104; Ewald v. Faulhaber Stable Co. (1907), 105 N. Y. 114; Sherman v. Ecker (1908), 59 Misc. 216, 110 N. Y. Supp. 265; Bacigalupo v. Parrilli (1908), 112 N. Y. Supp. 1040; O'Bannon J. W. Co. v. Curran (1908), 129 A. D. 90, 113 N. Y. Supp. 359; Kuflick v. Glasser (1909), 114 N. Y. Supp. 870; Dupont de Nemour Powder Co. v. Rooney (1909), 63 Misc. 344, 117 N. Y. Supp. 220; Studebaker Sons Co. v. Fuether (1910), 123 N. Y. Supp. 118; Noonan & Price Co. v. E. Kwanok Realty Co. (1910), 123 N. Y. Supp. 915; Klotz v. Silver (1911), 127 N. Y. Supp. 1090; Mayer v. Boyle (1912) 132 N. Y. Supp. 729; Smith v. Leiman (1912) 133 N. Y. Supp. 1001; Pirl v. Cary (1912), 134 N. Y. Supp. 1036; Badt v. Miller (1912), 135 N. Y. Supp. 13, 150 A. D. 920; Kahnweiler v. Solomon, 177 N. Y. Supp. 739.

*North Carolina.*—Rouse v. Wooten (1906), 140 N. Car. 557, 53 S. E. 430, 111 Am. St. 875; Perry Co. v. Taylor (1908), 148 N. Car. 362, 62 S. E. 423; House v. Fayssoux (1914), 168 N. C. 1, 83 S. E. 692, Ann Cas. 1917B, 835; First Nat. Bank of Henderson v. Johnson (1915), 86 S. E. 360; Edwards v. Standard Life Ins. Co. (1917), 92 S. E. 695; Newland v. Moore (1917), 92 S. E. 367; Barber v. W. M. Absher Co. (1918), 175 N. E. 602; Horton v. Wilson (1918), 95 S. E. 904.

*North Dakota.*—Union State Bank v. Benson (1917), 165 N. W. 509.

*Ohio.*—Elwortty-Helwick Co. v. Hess, 9 Ohio App. 200; Rockfield v. First Nat. Bank of Springfield (1907), 77 Ohio St. 311, 83 N. E. 392.

*Oregon.*—Robinson v. Holmes (1910), 57 Ore. 5, 109 Pac. 754.

*Pennsylvania.*—Link v. Bergdoll (1907), 35 Pa. Super Ct. 155; First Nat. Bank v. McBride (1911), 230 Pa. 261.

*Rhode Island.*—Cook v. Am. Tubing & Webbing Co. (1906), 28 R. I. 41, 65 Atl. 641; Deahey v. Choquet (1907), 28 R. I. 338.

*Tennessee.*—Am. Nat. Mank v. Nat. Fertilizer Co. (1911), 125 Tenn. 329, 143 S. W. 597; Nolan v. H. E. Wilcox Motor Co. (1917), 195 S. W. 581.

*Virginia.*—Security Loan & Trust Co. v. Fields (1910), 110 Va. 827, 67 S. E. 342.

*Washington.*—Galbraith v. Shepard (1906), 43 Wash. 698, 86 Pac. 1113; Morris-Miller Co. v. Pressentin, 63 Wash. 74, 114 Pac. 912; Bardshar v. Chaffee (1916), 156 Pac. 388; Codd v. Von Der Ake (1916), 159 Pac. 686.

*West Virginia.*—Rusmisset v. White Oak Co. (1917), 92 S. E. 672.

**§ 90. By whom given.** The notice may be given by or on behalf of the holder, or by or on behalf of any party to the



instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.<sup>1</sup> <sup>1a</sup>

See text, § 167.

Cross sections: 68, 109, 119-5, 91.

Corresponding provisions of English Bills of Exchange Act: Section 49 (1).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Connecticut*.—Blue Ribbon Garage v. Baldwin (1917), 101 Atl. 83.

*Illinois*.—W. A. Fowler Papker Co. v. Best Jones Sales Book Co. (1913), 183 Ill. App. 310.

*Kentucky*.—Williams v. Paintsville Nat. Bank (1911), 143 Ky. 781, 137 S. W. 535.

*Missouri*.—Eaves v. Keeton (1917), 193 S. W. 629.

*New York*.—University Press v. Williams (1900), 48 A. D. 188; Trader's Nat. Bank v. Jones (1905); 104 A. D. 433, 93 N. Y. Supp. 768; First Nat. Bank v. Gridley, 112 A. D. 398, 98 N. Y. Supp. 445.

*Rhode Island*.—Cook v. Am. Tubing & Webbing Co. (1906), 28 R. I. 41, 65 Atl. 641.

*United States*.—Piedmont & Caro Ry. Co. v. Shee (1915), 223 Fed. 973 (C. C. A., 4th Ct.)

§ 91. Notice given by agent. Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.<sup>1</sup> <sup>1a</sup>

See text, § 167.

Cross sections: 66, 19, 119-5.

Corresponding provisions of English Bills of Exchange Act: Section 49 (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Possession of check by bank cashier is evidence of his agency from the holder to protest it. Hooper v. Herring (Ala.), 70 So. 308.

Although A could not give notice of dishonor to B his accommodation indorser, he could forward notice given by another to B as agent of holder. Traders' Nat. Bank v. Jones, 104 App. Div. 433, 93 N. Y. Supp. 768.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states where this section has been construed:

*Alabama*.—Hooper v. Herring, 70 So. 308.

*Illinois*.—W. A. Fowler Paper Co. v. Best-Jones Sales Book Co. (1913), 183 Ill. App. 310.

*New York*.—Kelly v. Theiss (1902), 77 A. D. 81; Traders' Nat. Bank v. Jones (1905), 104 A. D. 433, 93 N. Y. Supp. 768; First Nat. Bank of the City of Brooklyn v. Gridley (1906), 98 N. Y. Supp. 445, 112 A. D. 398.

**§ 92. Effect of notice on behalf of holder.** Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.<sup>1a</sup>

See text, § 174.

Cross sections: 91.

Corresponding provisions of English Bills of Exchange Act: Sec. 49 (3).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*New York*.—Traders' Nat. Bank v. Jones, 104 A. D. 433, 93 N. Y. Supp. 768.

*Pennsylvania*.—Nat. Bank of Phoenixville v. Bonsor (1909), 38 Pa. Super Ct. 275.

*United States*.—Piedmont Carolina Ry. Co. v. Shaw, 223 Fed. Rep. 973, 138 C. C. A. 227.

**§ 93. Effect where notice is given by party entitled thereto.** Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given.<sup>1. 1a</sup>

See text, § 174.

Corresponding provisions of English Bills of Exchange Act: Sec. 49 (4).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Where indorsers of note talked about the verbal notice of dishonor the notice of one indorser to another enured to benefit of holder. Piedmont Carolina Ry. Co. v. Shaw, 223 Fed. Rep. 973, 138 C. C. A. 227.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*New York*.—Weiss v. Rieser (1909), 62 Misc. 292, 114 N. Y. Supp. 983.

*United States*.—Piedmont & Ca. Ry. Co. v. Shaw (1915), 223 Fed. 973, 138 C. C. A. 227 (C. C. A., 4th Ct.).

§ 94. **When agent may give notice.** Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.<sup>1</sup> <sup>1a</sup>

See text, § 167.

Corresponding provision of English Bills of Exchange Act: Sec. 49 (13).

In the Arkansas act in the second sentence after the words "receipt of said notice" are the following words: "himself must do so within the same time for giving notice as if the agent had been an independent holder."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Bank holding note for collection may forward notice of dishonor to bank from which it received the note for mailing. Gleason v. Thayer, 87 Conn. 248, 87 Atl. 790, Ann. Cas. 1915B, 1069.

Notice may be given to beneficial owner through intervening holders for collection. Blue Ribbon Garage v. Baldwin, 91 Conn. 674, 101 Atl. 83.

Agent mailing notice to principal with postage for forwarding to indorser, he is not guilty of negligence in collecting. Brill v. Jefferson Bank, 159 App. Div. 461, 144 N. Y. Supp. 539.

Notice sent through branches of forwarding bank were sufficient to bind indorsers. Fielding v. Corry (1898), 1 I. Q. B. 268.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Colorado*.—De La Vergne v. Globe Printing Co. (1915), 148 Pac. 923.

*Connecticut*.—Gleason v. Thayer (1913), 87 Atl. 790, 87 Conn. 248, Ann. Cas. 1915B, 1069; Blue Ribbon Garage v. Baldwin, 91 Conn. 674, 101 Atl. 83.

*Illinois*.—W. A. Fowler Paper Co. v. Best-Jones Sales Book Co. (1913), 183 Ill. App. 310.

*Massachusetts*.—Middleborough Nat. Bk. v. Cole (1906), 191 Mass. 168, 77 N. E. 781.

*New York*.—Brill v. Jefferson Bank (1913), 159 A. D. 461, 144 N. Y. Supp. 539.

*North Carolina*.—State Bk. of Chicago v. Carr (1902), 130 N. Car. 479.

*United States*.—Lyons v. Westwater (1910), 103 C. C. A. 663, 181 Fed. 681 (Pa.).

**§ 95. When notice sufficient.** A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.<sup>1, 1a</sup>

See text, § 166.

Corresponding provision of English Bills of Exchange Act: Sec. 49 (7).

The Kentucky act omits the word "not" in the first sentence and substitutes the word "written" for the word "verbal" in the last part of the first sentence.

In the Kentucky and North Carolina acts the words "the notice" are omitted after the word "vitiates" in the last sentence of the section.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Notice and envelope addressed to another party do not give notice to indorser who may receive it. *Marshall v. Sonneman*, 216 Pa. 65, 64 Atl. 874.

Indorser released unless notice is in writing. *Grayson Co. Bank v. Elbert*, 143 Ky. 750, 137 S. W. 782.

Although notice on its face was to make it if it was in an envelope addressed to indorser and was opened by him he has sufficient notice. *Wilson v. Peck*, 66 Misc. Rep. 179, 121 N. Y. Supp. 344.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*California*.—*Smith v. Hirst* (1917), 163 Pac. 334.

*Connecticut*.—*Blue Ribbon Garage v. Baldwin* (1917), 101 Atl. 83.

*Iowa*.—*Higby v. Bahrenfuss* (1917), 163 N. W. 247.

*Kentucky*.—*Grayson Co. Bk. v. Elbert* (1912), 143 Ky. 750, 137 S. W. 782.

*New York*.—*Wilson v. Peck* (1910), 121 N. Y. Supp. 344, 66 Misc. 179; *Mayer v. Boyle* (1912), 132 N. Y. Supp. 729.

*Pennsylvania*.—*Marshall v. Sonneman* (1906), 216 Pa. 65, 64 Atl. 874.

*Wisconsin*.—Second Nat. Bk. of Richmond v. Smith (1903), 118 Wis. 18, 94 N. W. 664; First Nat. Bk. v. McBride (1911), 230 Pa. 261.

§ 96. **Form of notice.** The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.<sup>1</sup> <sup>1a</sup>

See text, § 165.

Cross sections: 106, 108, 76, 89, 97.

In the Kentucky act the words "or merely oral" are omitted.

Corresponding provision of English Bills of Exchange Act: Secs. 49 (5), 49 (15).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Upon receipt of notice of dishonor by owner he telephoned one indorser and saw a second personally next day. Notice sufficient. *Blue Ribbon Garage v. Baldwin*, 91 Conn. 674, 101 Atl. 83.

Oral notice insufficient where act omits words "or merely oral." *Grayson Co. Bank v. Elbert*, 143 Ky. 750, 137 S. W. 782.

Informal letter as sufficient notice. *Doherty v. First Nat. Bank*, 170 Ky. 810, 186 S. W. 937.

Oral notice given personally or by agent charges indorser. *Kelly v. Theiss*, 77 App. Div. 81, 78 N. Y. Supp. 1050.

Personal notice left with person in charge where indorser absent. *American Exchange Nat. Bank v. American Hotel Victoria Co.*, 103 App. Div. 372, 92 N. Y. Supp. 1006.

Omissions that do not invalidate notice. *Herrmann Lumber Co. v. Bjurstrom*, 74 Misc. Rep. 93, 131 N. Y. Supp. 689.

Telephone notice not sufficient. *Mayer v. Boyle*, 132 N. Y. Supp. 729.

Where assistant treasurer indorsed corporation note and he knew from circumstances that corporation had not paid, formal notice unnecessary. *William S. Merrell Chemical Co. v. Root*, 152 N. Y. Supp. 368.

Notice must be given by mail or personally. *Price v. Warner*, 60 Ore. 7, 118 Pac. 173.

Declaration of demand and dishonor accompanied by copy of note sufficient. *Marshall v. Sonneman*, 216 Pa. 65, 64 Atl. 874.

Notice by telephone sufficient if indorser properly identified. *American Nat. Bank v. Nat. Fertilizer Co.*, 125 Tenn. 328, 143 S. W. 597.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Scarborough v. City Nat. Bk.* (1908), 157 Ala. 577, 48 So. 62.

*California*.—*Smith v. Hirst* (1917), 163 Pac. 334, 32 Cal. App. 507.

*Colorado*.—*De La Vigne v. Globe Printing Co.* (1915), 148 Pac. 923.

*Connecticut*.—Blue Ribbon Garage v. Baldwin, 91 Conn. 674, 101 Atl. 83.

*Florida*.—Ryan v. State (1910), 60 Fla. 25, 53 S. E. 448; Jones v. Manitowoc Shipbuilding & Dry Dock Co. (1913), 62 So. 590.

*Indiana*.—Swift & Co. v. Miller, 62 Ind. App. 312, 113 N. E. 447.

*Kentucky*.—Grayson Co. Bk. v. Elbert (1912), 143 Ky. 750, 137 S. W. 782; Doherty v. First Nat. Bk. (1916), 170 Ky. 810, 186 S. W. 937.

*New Jersey*.—Battery Park Bk. v. Ramsay (1917), 100 Atl. 51.

*New York*.—University Press v. Williams (1900), 48 A. D. 188; Kelly v. Theiss (1902), 77 A. D. 81, 78 N. Y. Supp. 1050; Am. Ex. Nat. Bk. v. Am. Hotel Victoria Co. (1905), 103 A. D. 373, 92 N. Y. Supp. 1006; Reed v. Spear (1905), 107 A. D. 144, 94 N. Y. Supp. 1007; Klotz v. Silver (1911), 127 N. Y. Supp. 1090; Herrmann Lumber Co. v. Bjurstrom, 131 N. Y. Supp. 689, 74 Misc. Rep. 93; Mayer v. Boyle (1912), 132 N. Y. Supp. 729; Merrell Chem. Co. v. Root (1915), 152 N. Y. Supp. 368.

*Oregon*.—Price v. Warner (1911), 60 Oreg. 7, 118 Pac. 173.

*Pennsylvania*.—Marshall v. Sonneman (1906), 216 Pa. 65, 64 Atl. 874; Zollner v. Moffitt (1909), 222 Pa. 644, 72 Atl. 285; First Nat. Bk. v. McBride (1911), 230 Pa. 261.

*Tennessee*.—American Nat. Bank v. Nat. Fertilizer Co., 125 Tenn. 328, 143 S. W. 597.

*Washington*.—Gleeson v. Lichty (1911), 62 Wash. 656, 114 Pac. 518; Schultz v. Crewdson (1917), 163 Pac. 734.

*Wisconsin*.—Second Nat. Bk. of Richmond v. Smith (1903), 118 Wis. 18, 94 N. W. 664.

*United States*.—Denham v. Donahue, 155 Fed. Rep. 385, 83 C. C. A. 657.

§ 97. To whom notice may be given. Notice of dishonor may be given either to the party himself or to his agent in that behalf.<sup>1</sup> <sup>1a</sup>

See text, § 168.

Cross sections: 76, 89, 96, 108.

Corresponding provisions of English Bills of Exchange Act: Sec. 49 (80).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Leaving notice at window of cashier of hotel corporation insufficient where no one shown to be present. Am. Exch. Nat. Bank v. Am. Hotel Victoria Co., 103 App. Div. 372, 92 N. Y. Supp. 1006.

Notice to one indorser delivered to another is notice to neither. Wilson v. Peck, 66 Misc. Rep. 179, 121 N. Y. Supp. 344.

Accommodation indorsement charges one as indorser not as joint maker Macauley v. Fund, 179 N. Y. Supp. 469.

Notice addressed to second indorser delivered to first indorser is not notice to him. *Marshall v. Sonneman*, 216 Pa. 65, 64 Atl. 874.

Telephone notice to clerk of corporation does not bind corporation unless clerk communicated notice to some officer. *American Nat. Bank v. Nat. Fertilizer Co.*, 125 Tenn. 328, 143 S. W. 597.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Florida*.—*Jones v. Manitowoc Shipbuilding & Dry Dock Co.* (1913), 62 So. 590.

*Illinois*.—*W. A. Fowler Paper Co. v. Best-Jones Sales Book Co.* (1913), 183 Ill. App. 310.

*Indiana*.—*Swift & Co. v. Miller* (1917), 113 N. E. 447.

*New York*.—*Mohlman Co. v. McKane* (1901), 69 N. Y. Supp. 1046, 60 A. D. 546; *Am. Ex. Nat. Bk. v. Am. Hotel Victoria Co.* (1905), 103 A. D. 372, 92 N. Y. Supp. 1006; *Reed v. Spear* (1905), 107 A. D. 114, 94 N. Y. Supp. 1007; *Wilson v. Peck*, 121 N. Y. Supp. 344, 66 Misc. Rep. 179; *Macauley v. Fund*, 179 N. Y. Supp. 469.

*Pennsylvania*.—*Marshall v. Sonneman*, 216 Pa. 65, 64 Atl. 874.

*Tennessee*.—*Am. Nat. Bk. v. Nat. Fertilizer Co.* (1911), 125 Tenn. 329, 143 S. W. 597.

§ 98. Notice where party is dead. When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence, he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.<sup>1, 1a</sup>

See text, § 168.

Corresponding provisions of English Bills of Exchange Act: 49 (9).

In the Arkansas act the words "must be sent by mail" are substituted for the words "may be sent" in the last sentence.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Reasonable diligence shown by notice to deceased indorser by name in case of executor in the latter's name and at his address. *Second National Bank v. Smith* (N. J.). 103 Atl. 862.

Notice to deceased indorser's representative on note payable in Canada must be in compliance with Canadian act. *Merchants' Bank v. Brown*, 86 App. Div. 599, 83 N. Y. Supp. 1037.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*New Jersey.*—Second Nat. Bank v. Smith, 103 Atl. 862.

*New York.*—Merchants Bank v. Brown (1903), 86 A. D. 599, 83 N. Y. Supp. 1037.

**§ 99. Notice to partners.** Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.<sup>1</sup> <sup>1a</sup>

See text, § 168.

Cross sections: 91.

Corresponding provisions of English Bills of Exchange Act: 49 (1).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Notice to one partner is notice to all. Kensington Nat. Bk. v. Ware, 32 Pa. Super. Ct. 247.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Kentucky.*—Aud v. McElvoy (1917), 197 S. W. 824.

*Massachusetts.*—Feigenspan v. McDonnell (1909), 201 Mass. 341, 87 N. E. 624.

*New York.*—Trader's Nat. Bk. v. Jones (1905), 104 A. D. 433, 93 N. Y. Supp. 768.

*Pennsylvania.*—Kensington Nat. Bk. v. Ware (1906), 32 Pa. Super. Ct. 247.

**§ 100. Notice to persons jointly liable.** Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.<sup>1</sup> <sup>1a</sup>

See text, § 168.

Corresponding provision of English Bills of Exchange Act: 49 (11).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Joint indorsers not discharged by failure to give notice to all joint indorsers. Doherty v. First Nat. Bank, 170 Ky. 810, 186 S. W. 937.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Kentucky.*—Doherty v. First Nat. Bk. (1916), 186 S. W. 937.



**§ 101. Notice to bankrupt.** Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.<sup>1</sup> <sup>1a</sup>

See text, § 168.

Corresponding provision of English Bills of Exchange Act: 49 (10).

**§ 102. Time within which notice must be given.** Notice may be given as soon as the instrument is dishonored and unless delay is excused as hereinafter provided, must be given within the times fixed by this act.<sup>1</sup> <sup>1a</sup>

See text, § 169.

Cross sections: 75.

Corresponding provision of English Bills of Exchange Act: 49 (12).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Finding of jury that proper notice was given as curing defective pleading. *Doherty v. First Nat. Bank*, 170 Ky. 810, 186 S. W. 937.

Notice may be given on last day of grace but he cannot begin an action until the next day. *Kennedy v. Thomas* (1894), 2 Q. B. 759.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*California*.—*Smith v. Hirst* (1917), 163 Pac. 334, 32 Cal. App. 507.

*Kentucky*.—*Elsey v. Peoples Bk. of Bardwell* (1916), 182 S. W. 873; *Doherty v. First Nat. Bank*, 170 Ky. 810, 186 S. W. 937.

*Maine*.—*Kerr v. Dyer* (1917), 102 Atl. 178.

*New York*.—*German-Am. Bk. v. Milliman* (1900), 65 N. Y. Supp. 242, 31 Misc. 87.

*Tennessee*.—*Am. Nat. Bk. v. Nat. Fertilizer Co.* (1911), 125 Tenn. 329, 143 S. W. 597.

**§ 103. Where parties reside in same place.** Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;

2. If given at his residence, it must be given before the usual hours of rest on the day following;

3. If sent by mail, it must be deposited in the post-office in time to reach him in usual course on the day following.<sup>1</sup> <sup>1a</sup>

See text, § 169.

Corresponding provision of English Bills of Exchange Act: 49 (12) (a).

In the Rhode Island act subsection 2 above is changed to read as follows: "If given at his residence it must be given before ten o'clock in the evening of the day following."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Notice two or three days after note due not sufficient. *Solomon v. Cohen*, 94 N. Y. Supp. 502.

Notice two days after due is too late. *Siegel v. Dubinsky*, 56 Misc. Rep. 681, 107 N. Y. Supp. 678.

Sufficiency of evidence where notice placed in mail chute on day of protest but postmarked next day. *Wilson v. Peck*, 66 Misc. Rep. 179, 121 N. Y. Supp. 344.

Written notice must be given when oral cannot on account of absence. *Price v. Warner*, 60 Ore. 7, 118 Pac. 173.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Colorado*.—*Emerson & Buckingham Bk. & Trust Co. v. German-American Trust Co.* (1919), 176 Pac. 472.

*Indiana*.—*Swift & Co. v. Miller* (1917), 113 N. E. 447.

*New York*.—*Cassel v. Regierer* (1908), 114 N. Y. Supp. 601; *Kelly v. Theiss* (1901), 65 A. D. 146; *Jurgens v. Wichman* (1908), 124 A. D. 531, 108 N. Y. Supp. 881; *In re Mandelbaum* (1913), 141 N. Y. Supp. 319; *Klotz v. Silver* (1911), 127 N. Y. Supp. 1090; *Siegel v. Dubnisky* (1907), 56 Misc. 68, 107 N. Y. Supp. 678; *Smith Co. v. America-Europe Co.* (1911), 128 N. Y. Supp. 81; *Solomon v. Cohen* (1905), 94 N. Y. Supp. 502; *Wilson v. Peck* (1910), 121 N. Y. Supp. 344, 66 Misc. 179.

*Oregon*.—*Price v. Warner* (1911), 60 Oreg. 7, 118 Pac. 173.

*Rhode Island*.—*Deahey v. Choquet* (1907), 28 R. I. 338.

*South Carolina*.—*Norwood Nat. Bk. v. Piedmont Pub. Co.* (1917), 91 S. E. 866.

§ 104. Where parties reside in different places. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the post-office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the post-office, then within the time that notice would have been received in due course of mail, if it has been deposited in the post-office within the time specified in the last subdivision.<sup>1</sup> <sup>1a</sup>

See text, § 169.

Cross section: 108.

Corresponding provisions of English Bills of Exchange Act: 49 (12) (1).

In the Kansas, Nebraska and Ohio acts the words "next preceding paragraph of this section" are substituted for the words "last subdivision."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Oral notice on the day following receipt of notice from agent is sufficient where agent's notice properly given. *De La Vergne v. Globe Printing Co.* (Col. App.), 148 Pac. 923.

Evidence of giving notice of dishonor. *Hudson v. Carlson*, — Ida. —, 170 Pac. 100.

When there were twelve daily trains between the two towns notice on the second day after dishonor not sufficient. *Harris v. Baker*, 226 Mass. 113, 115 N. E. 292.

Notice of dishonor by mail. *Second Nat. Bank of Hoboken v. Smith*, — N. J. —, 103 Atl. 862.

Notice of dishonor by mail—burden of proof. *Nickell v. Bradshaw*, — Oreg. —, 183 Pac. 12.

Proof of notice properly addressed, stamped and mailed, not rendered insufficient because to person as treasurer when he indorsed individually. *Farmer's Nat. Bk. v. Howard*, 71 W. Va. 57, 76 S. E. 122.

Failure to mail before departure of mail and to prepay postage for five days releases indorser. *First National Bank of Shawano v. Miller*, 139 Wis. 126, 120 N. W. 820.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Colorado*.—*De La Vergne v. Globe Printing Co.* (1915), 148 Pac. 923.

*Idaho*.—*Hudson v. Carlson* (1918), 170 Pac. 100.

*Indiana*.—*Swift & Co. v. Miller* (1916), 113 N. E. 447.

*Iowa*.—*Citizens Bk. of Pleasantville v. First Nat. Bk. of Pleasantville* (1907), 135 Iowa 605, 13 L. R. A. (N. S.) 303, 113 N. W. 481.

*Massachusetts*.—Harris v. Baker (1917), 226 Mass. 113, 115 N. E. 292.

*New Jersey*.—Second Nat. Bk. of Hoboken v. Smith (1918), 103 Atl. 862.

*New York*.—Jurgens v. Wichman (1908), 124 A. D. 531, 108 N. Y. Supp. 881; Kelly v. Theiss (1901), 65 A. D. 146; Metropolitan Bk. v. Engel (1901), 66 A. D. 273; Mohlman Co. v. McKane (1901), 60 A. D. 546, 69 N. Y. Supp. 1046; Smith Co. v. Ameirca-Europe Co. (1911), 128 N. Y. Supp. 81; University Press Co. v. Williams (1900), 48 A. D. 188.

*Oregon*.—Nickell v. Bradshaw, 183 Pac. 12.

*West Virginia*.—Farmers Nat. Bk. v. Howard (1912), 71 W. Va. 57, 76 S. E. 122.

*Wisconsin*.—First Nat. Bk. of Shawano v. Miller (1909), 139 Wis. 126, 120 N. W. 820.

*California*.—Seeley v. Stoltz, Inc. (1917), 163 Pac. 681, 32 Cal. App. 458.

**§ 105. When sender deemed to have given due notice.** Where notice of dishonor is duly addressed and deposited in the post-office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.<sup>1</sup> <sup>1a</sup>

See text, § 171.

Corresponding provision of English Bills Act: 49 (15).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Proof of execution, stamping and placing with other mail matter to be taken to postoffice sufficient without clerk who carried it. Central Nat. Bank v. Stoddard, 83 Conn. 332, 76 Atl. 472.

Proof of mailing notice of dishonor. Hudson v. Carlson, — Ida. —, 170 Pac. 100.

Plaintiff suing on dishonored instrument has burden of proving notice of dishonor. First Nat. Bank v. Star Watch Case Co., 187 Mich. 224, 153 N. W. 722.

Notice presumed even if miscarriage in mail. Second Nat. Bank of Hoboken v. Smith, — N. J. —, 103 Atl. 862.

Evidence of non-receipt is competent on question of whether notice was mailed. Union Bank of Brooklyn v. Deshel, 139 App. Div. 217, 123 N. Y. Supp. 585.

Where notice of dishonor is addressed to indorser at incorrect address indorser is not charged unless he receives it. Century Bank v. Breitbard, 89 Misc. Rep. 308, 151 N. Y. Supp. 588.

Addressing notice to indorser at No. 24, instead of "No. 22 and 23 E. Market Street, Wilkesbarre, Pa.," is not sufficient where defendant showed non-receipt and another by same name in city. Siegel v. Hirsch, 26 Pa. Super. Ct. 398.

After proof by notary of mailing notice of dishonor not erroneous to exclude defendant's testimony of non-receipt. First Nat. Bank v. De-lone, 254 Pa. 409, 98 Atl. 1042.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Connecticut*.—Central Nat. Bank v. Stoddard, 83 Conn. 332, 76 Atl. 472.

*Idaho*.—Hudson v. Carlson, 170 Pac. 100.

*Illinois*.—Kewanee Nat. Bk. v. Ladd (1912), 175 Ill. App. 151.

*Massachusetts*.—Feigenspan v. McDonnell (1909), 201 Mass. 341, 87 N. E. 624; Harris v. Baker (1917), 115 N. E. 292.

*Michigan*.—First Nat. Bk. of Manistee v. Star Watch Case Co. (1915), 187 Mich. 224, 153 N. W. 722.

*Missouri*.—Eaves v. Keeton (1917), 153 S. W. 629; First Nat. Bk. of Grant City v. Korn (1915), 179 S. W. 721.

*New Jersey*.—Battery Park Bk. v. Ramsay (1917), 100 Atl. 51; Second Nat. Bank of Hoboken v. Smith, 103 Atl. 862.

*New York*.—Century Bk. of City of N. Y. v. Breitbard (1915), 151 N. Y. Supp. 588, 89 Misc. Rep. 308; McGrath v. Francoline (1915), 156 N. Y. Supp. 981; State Bank v. Solomon (1903), 84 N. Y. Supp. 976; Union Bk. of Brooklyn v. Deshel (1910), 123 N. Y. Supp. 585, 139 A. D. 217.

*Pennsylvania*.—First Nat. Bk. of Hanover v. Delone (1916), 254 Pa. 409, 98 Atl. 1042; Siegel v. Hirsch (1904), 26 Pa. Super. Ct. 398; Zollner v. Moffatt (1909), 222 Pa. 644, 72 Atl. 285.

*West Virginia*.—Board of Education v. Angel (1915), 84 S. E. 747; Farmer's Nat. Bk. v. Howard (1912), 71 W. Va. 57.

*Wisconsin*.—First Nat. Bank of Shawano v. Miller, 139 Wis. 126, 120 N. W. 820.

§ 106. Deposit in post-office; what constitutes. Notice is deemed to have been deposited in the post-office when deposited in any branch post-office or in any letter box under the control of the post-office department.<sup>1, 1a</sup>

See text, § 171.

In Arkansas the words "when deposited" are omitted. This is probably a clerical error.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Deposit of notice in mail chute of government is sufficient. Wilson v. Peck, 66 Misc. Rep. 179, 121 N. Y. Supp. 344.

Leaving at usual place in office where postman collected mail not sufficient proof. Friedman v. Maltinsky (Pa.), 103 Atl. 731.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*California*.—Seely v. Stoltz, Inc. (1917), 163 Pac. 681, 32 Cal. App. 458.

*Connecticut*.—Cent. Nat. Bk. v. Stoddard (1910), 83 Conn. 330, 76 Atl. 472.

*Massachusetts*.—Feigenspan v. McDonnell, 201 Mass. 341, 87 N. E. 624.

*New York*.—Wilson v. Peck (1910), 121 N. Y. Supp. 344, 66 Misc. 179.

*New Jersey*.—Battery Park Bk. v. Ramsay (1917), 100 Atl. 51.

*Pennsylvania*.—Phoenix Brewing Co. v. Weiss (1903), 23 Pa. Super. Ct. 519; Friedman v. Maltinsky, 103 Atl. 731.

§ 107. Notice to subsequent party; time of. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.<sup>1, 1a</sup>

See text, § 169.

Corresponding provisions of English Bills of Exchange Act: 49 (14).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Holder of note for collection may give notice to his principal or to all parties liable. Gleason v. Thayer, 87 Conn. 248, 87 Atl. 790, Ann. Cas. 1915B, 1069.

Joint indorser as antecedent party. Williams v. Paintsville Nat. Bank, 143 Ky. 781, 137 S. W. 535, Ann. Cas. 1912D, 350.

Inclosing notice of dishonor to subsequent indorser with postage for forwarding is not sufficient. Fuller Buggy Co. v. Waldron, 112 App. Div. 814, 99 N. Y. Supp. 920.

Indorser of check notified on 29th of dishonor gave telegraphic notice to defendant on 30th, which was in time. Jurgens v. Wichman, 124 App. Div. 531, 108 N. Y. Supp. 881.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Connecticut*.—Gleason v. Thayer (1913), 87 Conn. 248, 87 Atl. 790, Ann. Cas. 1915B, 1069.

*Kentucky*.—Williams v. Paintsville Nat. Bk. (1911), 143 Ky. 781, 137 S. W. 535, Ann. Cas. 1912D, 350.

*New York*.—Brill v. Jefferson Bk. (1913), 159 A. D. 461, 144 N. Y. Supp. 539; Fuller Buggy Co. v. Waldron (1907), 99 N. Y. Supp. 920, 112 A. D. 814; Jurgens v. Wichman (1908), 124 A. D. 531, 108 N. Y. Supp. 881.

**§ 108. Where notice must be sent.** Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the post-office nearest to his place of residence or to the post-office where he is accustomed to receive his letters; or
2. If he live in one place, and has his place of business in another, notice may be sent to either place; or
3. If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient though not sent in accordance with the requirements of this section.<sup>1</sup> <sup>1a</sup>

See text, § 170.

Cross section: 104.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Notice is properly addressed to place where indorser stated his residence to be at time of execution. *Archuleta v. Johnston*, 53 Colo. 393, 127 Pac. 134.

Circumstances which ratify address placed on note by subsequent indorser. *Lankofsky v. Raymond*, 217 Mass. 98, 104 N. E. 489.

Where removal shown, but no date stated, it is presumed to be after notice given to place of residence at time of dating note. *Mohlman v. McKane*, 60 App. Div. 546, 69 N. Y. Supp. 1046.

Addressing notice to indorser at New York City, New York, must be supported by evidence that indorser lived there at same time or was sojourning there. *Fonseca v. Hartman*, 84 N. Y. Supp. 131.

Sufficient diligence on part of notary shown where notice sent to last city directory address where other address not obtainable. *McGrath v. Fancolini*, 92 Misc. Rep. 359, 156 N. Y. Supp. 981.

Notary's certificate of notice of protest is presumed to be the right place in absence of facts to contrary. *Scott v. Brown*, 240 Pa. 328, 87 Atl. 431.

Proof of mailing notice to business address of director of company without proof of his receiving his mail there is insufficient. *Knight v. Infantry Hall Auditorium Co.*, 35 R. I. 383, 87 Atl. 165, 195.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Colorado*.—*Torbet v. Montague* (1912), 127 Pac. 134; *Archuleta v. Johnston*, 53 Colo. 393, 127 Pac. 134,

*Massachusetts*.—Lankofsky v. Raymond (1914), 217 Mass. 98, 104 N. E. 489.

*Missouri*.—First Nat. Bank of Grant City v. Korn (1915), 179 S. W. 721; Vogel v. Starr (1908), 132 Mo. App. 430, 112 S. W. 27.

*New York*.—First Nat. Bank v. Gridley, 112 A. D. 398, 98 N. Y. Supp. 445; Albany Trust Co. v. Frothingham (1906), 50 Misc. 598, 99 N. Y. Supp. 343; Century Bk. of City of N. Y. v. Breithart (1915), 151 N. Y. Supp. 588; Dupont de Nemour Powder Co. v. Rooney (1909), 63 Misc. 344, 117 N. Y. Supp. 220; Ebling Brewing Co. v. Rheinheimer (1900), 32 Misc. 594, 66 N. Y. Supp. 458; Fonseca v. Hartman (1903), 84 N. Y. Supp. 131; In re Mandelbaum (1913), 141 N. Y. Supp. 319, 80 Misc. Rep. 475; McGrath v. Francolini (1915), 92 Misc. Rep. 359, 156 N. Y. Supp. 981; Mohlman Co. v. McKane (1901), 69 N. Y. Supp. 1046, 60 A. D. 546; Smith Co. v. America-Europe Co. (1911), 128 N. Y. Supp. 81; Hussey v. Sutton, 96 Misc. Rep. 552, 160 N. Y. Supp. 934.

*Pennsylvania*.—Scott v. Brown (1913), 240 Pa. 328, 87 Atl. 431; Siegel v. Hirsch (1904), 26 Pa. Super. Ct. 398.

*Rhode Island*.—Knight v. Infantry Hall Auditorium Co. (1913), 35 R. I. 383, 87 Atl. 165, 195.

§ 109. **Waiver of notice.** Notice of dishonor may be waived either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.<sup>1, 1a</sup>

See text, § 172.

Cross sections: 82-3, 64-1, 66, 119-5, 70.

Corresponding provisions of English Bills of Exchange Act: 50 (2) (b).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

A new promise to pay after no notice of dishonor is binding. Hurlburt v. Bradley, — Conn. —, 109 Atl. 171.

Waiver of presentment for payment dispenses with notice of dishonor. Baumeister v. Kuntz, 53 Fla. 340, 42 So. 886.

Notice before maturity with indorser's instructions to make collection is not a waiver of proper notice. Porter v. Moles, 151 Iowa 279, 131 N. W. 23.

Indorser's promise on day of maturity of note to look after it waived notice of dishonor. Dillon v. Brion, 96 Kan. 189, 150 Pac. 553.

Oral promise to renew note made after maturity by accommodation indorser is not a waiver. Mechanics' and Farmers' Sav. Bank v. Katterjohn, 137 Ky. 427, 125 S. W. 1071, Ann. Cas. 1912A, 439.

Indorser is unconditionally bound where note contains waiver clause. Atkins v. Dixie Fair Co., 135 La. 622, 65 So. 762.

Notice of dishonor waived. Frank-Taylor-Kendrich Co. v. Voissement, 142 La. 973.



A waiver of notice, of dishonor may be implied from indorser's words and conduct. *Linthicum v. Bagby*, 131 Md. 644, 102 Atl. 997.

Indorser's ignorance of fact that he signed waiver is insufficient if indorsee did not know of indorser's ignorance. *First Nat. Bank v. Soltz* (Mo. App.), 183 S. W. 675.

Indorser may waive his discharge for failure of notice by promise to pay. *Richardson v. Kulp*, 81 N. J. L. 123, 78 Atl. 1062.

Indorsement of renewal note not a waiver of notice of dishonor of original note. *First Nat. Bank v. Gridley*, 112 App. Div. 398, 98 N. Y. Supp. 445.

Indorser paying note on theory note was due on June 3d when it was due on May 3d could recover money paid for failure of notice. *Isaacs v. Kobre*, 145 N. Y. Supp. 919.

Waiver of notice of extension waives notice of dishonor. *First Nat. Bank v. Johnston*, 169 N. C. 526, 86 S. E. 360, L. R. A. 1916B, 941.

Indorser's promise to pay after discharge is a waiver thereof whether with or without knowledge of discharge. *Burgettstown Nat. Bank v. Hill*, 213 Pa. 456, 63 Atl. 186, 3 L. R. A. (N. S.) 1079n.

Facts constituting waiver must be alleged and proved. *Galbraith v. Shepard*, 43 Wash. 698, 86 Pac. 1113.

Waiver of notice of presentment is not waiver of presentment. *Thompson v. Curry*, 79 W. Va. 771, 91 S. E. 801.

All signing under printed waiver are bound thereby. *Central Nat. Bank v. Sciotoville Co.* (W. Va.), 91 S. E. 808.

Indorser's promise to pay after discharge without knowledge of discharge not a waiver. *Aebi v. Bank of Evansville*, 124 Wis. 73, 102 N. W. 329, 68 L. R. A. 964, 109 A. S. R. 925.

Knowledge of secretary of drawer company is not notice to company where it was not his duty to notify the company. *In re Fenwick* (1902), 1 Ch. 507.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Colorado*.—*Archuleta v. Johnston* (1906), 38 Colo. 325, 87 Pac. 1145; *Torbert v. Montague*, 38 Colo. 325, 87 Pac. 1145.

*Connecticut*.—*Hurlburt v. Bradley*, 109 Atl. 171.

*Florida*.—*Worley v. Johnson* (1910), 53 So. 542, 60 Fla. 294, 33 L. R. A. 641; *Baumeister v. Kuntz*, 53 Fla. 340, 42 So. 886.

*Illinois*.—*Steward v. Soenksen* (1912), 173 Ill. App. 1; *Simonoff v. Granite City Nat. Bank*, 279 Ill. 248, 116 N. E. 636.

*Indiana*.—*Linthicum v. Bagby*, 131 Ind. 644.

*Iowa*.—*Porter v. Moles* (1911), 151 Iowa 279, 131 N. W. 23; *Quinn v. Bane* (1917), 164 N. W. 788.

*Kansas*.—*Dillon v. Brion*, 96 Kan. 189, 150 Pac. 553.

*Kentucky*.—*Doherty v. First Nat. Bk.* (1916), 170 Ky. 810, 186 S. W. 937; *Mechanics & Farmer's Sav. Bk. v. Katterjohn* (1910), 137 Ky. 427, 125 S. W. 1071, Ann. Cas. 1912A, 439; *Owensboro Sav. Bk. & Tr. Co.'s Receiver v. Haynes* (1911), 136 S. W. 1004.

*Louisiana*.—Frank Taylor Kendrick Co. v. Voissement (1918), 142 La. 973, 77 So. 895; Atkins v. Dixie Fair Co., 135 La. 622, 65 So. 762.

*Maryland*.—Linthicum v. Bagby (1917), 131 Md. 644, 102 Atl. 997,

*Massachusetts*.—Lankofsky v. Raymond (1914), 217 Mass. 98, 104 N. E. 489; Toole v. Crafts (1907), 196 Mass. 397, 82 N. E. 22; Hall v. Crane, 213 Mass. 326, 100 N. E. 336; Sweetser v. Jordan, 216 Mass. 350, 103 N. E. 905.

*Missouri*.—First Nat. Bank v. Soltz (Mo. App.), 183 S. W. 675; Belch v. Roberts (1915), 177 S. W. 1062.

*New Jersey*.—Jordan v. Reed, 77 N. J. L. 584, 71 . . 280; Richardson v. Kulp, 81 N. J. L. 123, 78 Atl. 1062.

*New York*.—Congress Brewing Co. v. Habenicht, 82 N. Y. Supp. 481, 83 A. D. 141; Hayward v. Empire St. Sugar Co. (1905), 93 N. Y. Supp. 449, 105 A. D. 21; First Nat. Bank v. Gridley, 98 N. Y. Supp. 445, 112 A. D. 398; O'Bannon J. W. Co. v. Curran (1908), 129 A. D. 90, 113 N. Y. Supp. 359; Well v. Corn Ex. Bk. (1909), 116 N. Y. Supp. 665, 63 Misc. 300, 116 N. Y. Supp. 665; Isaacs v. Kobre, 145 N. Y. Supp. 919; First Nat. Bank v. Baker, 148 N. Y. Supp. 372, 163 A. D. 72.

*North Carolina*.—First Nat. Bk. of Henderson v. Johnson (1915), 86 S. E. 360, 169 N. C. 526, L. R. A. 1916B, 941.

*Oregon*.—Moll v. Roth Co. (1915), 77 Ore. 593, 152 Pac. 235; Robinson v. Holmes (1910), 57 Ore. 5, 109 Pac. 754; Clark v. Sallaska (1918), 174 Pac. 505.

*Pennsylvania*.—In re Aldred's Estate (1911), 229 Pa. 627; Burgettstown Nat. Bk. v. Nill (1906), 213 Pa. 456, 63 Atl. 186, 3 L. R. A. (N. S.) 1079n, 110 Am. St. Rep. 554.

*Virginia*.—Security Loan & Trust Co. v. Fields (1910), 110 Va. 827, 67 S. E. 342.

*Washington*.—Galbraith v. Shepard (1906), 43 Wash. 698, 86 Pac. 1113; Gleeson v. Lichty, 62 Wash. 656, 114 Pac. 518.

*West Virginia*.—Central Nat. Bank v. Sciotoville Co. (W. Va.), 91 S. E. 808; Thompson v. Curry (1917), 79 W. Va. 771, 91 S. E. 801.

*Wisconsin*.—Aebi v. Bank of Evansville, 124 Wis. 73, 102 N. W. 329, 68 L. R. A. 964, 109 Am. St. Rep. 925.

§ 110. Whom affected by waiver. Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.<sup>1 1a</sup>

See text, § 179.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Indorsers and accommodation indorsers are bound by clause for waiver in note as well as maker. Owensboro Savings Bank v. Haynes, 143 Ky. 534, 136 S. W. 1004.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Kentucky*.—Owensboro Sav. Bk. & Tr. Co.'s Receiver v. Haynes (1911), 143 Ky. 534, 136 S. W. 1004; Atkinson v. Skidmore (1913), 153 S. W. 456.

*Oregon*.—Clark v. Sallaska (1918), 174 Pac. 505.

*Pennsylvania*.—Burgettstown Nat. Bk. v. Nill (1906), 213 Pa. 456.

*West Virginia*.—Central Nat. Bk. v. Sciotoville Milling Co. (1917), 91 S. E. 808.

§ 111. **Waiver of protest.** A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.<sup>1</sup> <sup>1a</sup>

See text, § 179.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

It is not a conclusion of law to allege that defendant "waived demand, protest and notice of demand, nonpayment and protest." Williams v. Peninsular Grocery Co. (Fla.), 75 So. 517.

Waiver of protest written on face of note before indorsed binds indorser. Frank-Taylor-Kendrick Co. v. Voissement, 142 La. 973, 77 So. 895.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Florida*.—Williams v. Peninsular Grocery Co., 75 So. 517.

*Idaho*.—Bk. of Montpelier v. Montpelier Lumber Co. (1909), 16 Idaho 730, 102 Pac. 685.

*Illinois*.—Simonoff v. Granite City Nat. Bank, 279 Ill. 248, 116 N. E. 636.

*Kentucky*.—Owensboro Sav. Bk. & Tr. Co.'s Receiver v. Haynes (1911), 136 S. W. 1004; Atkinson v. Skidmore (1913), 152 Ky. 413, 153 S. W. 456.

*Louisiana*.—Wisdom & Levy v. Bille (1908), 120 La. 699, 45 So. 554; Frank Taylor Kendrick Co. v. Voissement (1918), 142 La. 973, 77 So. 895.

*North Carolina*.—First Nat. Bk. of Henderson v. Johnson (1915), 86 S. E. 360.

*Tennessee*.—Waterhouse v. Sterchi Bros. (1918), 201 S. W. 150.

*Texas*.—Barger v. Brubaker (1916), 187 S. W. 1025.

**§ 112. When notice is dispensed with.** Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged.<sup>1</sup> <sup>1a</sup>

See text, § 172.

Cross sections: 108, 25.

Corresponding provision of English Bills of Exchange Act: 50 (2) (a).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Reasonable diligence is question for jury. *Brewster v. Schrader*, 26 Misc. Rep. 480, 57 N. Y. Supp. 606.

Undisputed facts present question of law as to reasonable diligence. *Press v. Williams*, 48 App. Div. 188, '62 N. Y. Supp. 986.

Inquiry only at place where indorser formerly worked not sufficient. *Silver v. Loucheim*, 84 Misc. Rep. 234, 147 N. Y. Supp. 29.

Facts which do not show reasonable diligence of notary. *Mechanic v. Elgin Iron Works*, 98 Misc. Rep. 620, 163 N. Y. Supp. 97.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*New York*.—*Reed v. Speer*, 94 N. Y. Supp. 1007, 107 App. Div. 144; *Howard v. Van Gieson* (1900), 56 A. D. 217; *University Press v. Williams*, 62 N. Y. Supp. 986, 48 A. D. 188; *Mohlman v. McKane*, 60 A. D. 546, 69 N. Y. Supp. 1046; *Brewster v. Shrader*, 57 N. Y. Supp. 606, 26 Misc. Rep. 480; *Fonseca v. Hartman* (1903), 84 N. Y. Supp. 131; *Siegel v. Dubinsky*, 107 N. Y. Supp. 678, 56 Misc. Rep. 681; *Silver v. Locheim* (1914), 147 N. Y. Supp. 29, 84 Misc. Rep. 234; *Mechanic v. Elgin Iron Works* (1917), 163 N. Y. Supp. 97, 98 Misc. Rep. 620; *McGrath v. Francolini*, 156 N. Y. Supp. 981, 92 Misc. Rep. 359.

**§ 113. Delay in giving notice of dishonor; how excused.** Delay in giving notice is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.<sup>1</sup> <sup>1a</sup>

See text, § 173.

Corresponding provisions of English Bills of Exchange Act: 50 (1).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Failure to give notice where knowledge of address where indorser may be found is obtained before suit. *Studdy v. Beesty*, 60 L. T. Rep. 647.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*New York.*—*University Press v. Williams* (1900), 48 A. D. 188; *Howard v. Van Gieson* (1900), 56 A. D. 217.

*Oregon.*—*Price v. Warner* (1911), 60 Oreg. 7, 118 Pac. 173.

*England.*—*Studdy v. Beetsy*, 60 L. T. Rep. 647.

§ 114. When notice need not be given to drawer. Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person;
2. Where the drawee is a fictitious person or a person not having capacity to contract;
3. Where the drawer is the person to whom the instrument is presented for payment;
4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
5. Where the drawer has countermanded payment.<sup>1, 1a</sup>

See text, § 172.

Cross section: 89.

Corresponding provisions of English Bills of Exchange Act: 50 (2) (c); 50 (2) (c) (4).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Plaintiff not entitled to notice of dishonor when he made check payable at bank in which he had no funds. *Demateis v. Vezee*, — Cal. App. —, 193 Pac. 793.

Failure to give notice of dishonor. *Torgerson v. Ohnstad*, — Minn. —, 182 N. W. 724.

Co-maker of note not entitled to notice of dishonor. *Boand v. Stewart* (Mo. App.), 188 S. W. 317.

Where payee took judgment against maker on note and later transferred the note indorsee can sue payee as indorser without demand on maker. *Hawkins v. Wiest*, 167 Mo. App. 439, 151 S. W. 789.

Burden is on holder or one claiming under him to excuse failure to give notice. *Cassel v. Regierer*, 114 N. Y. Supp. 601.

Pleading failing to allege notice of dishonor. *Adler v. Levinson*, 65 Misc. Rep. 514, 120 N. Y. Supp. 67.

Allegations as to countermanded payment is sufficiently alleged by setting forth check with words "Pmt. Stopped" indorsed on face. *National Copper Bank v. Davis Co. Bank*, 47 Utah, 236, 152 Pac. 1180.

<sup>1a</sup> The following is a complete list of the cases, arranged, alphabetically by states, where this section has been construed:

*Arkansas*.—*Gibbs v. Hopper* (1913), 160 S. W. 879.

*California*.—*Demateis v. Vezee*, 193 Pac. 793.

*Florida*.—*Worley v. Johnson* (1910), 53 So. 542.

*Massachusetts*.—*Leonard v. Draper* (1905), 187 Mass. 536, 73 N. E. 644.

*Minnesota*.—*Forgerson v. Ohnstad*, 182 N. W. 724.

*Missouri*.—*First Nat. Bank of Grant City v. Korn* (1915), 179 S. W. 721; *Boand v. Stewart* (1916), 188 S. W. 317; *Hawkins v. Weist*, 167 Mo. App. 439, 151 S. W. 789.

*New Jersey*.—*Jordon v. Reed* (1908), 77 N. J. L. 584, 71 Atl. 280.

*New York*.—*Trader's Nat. Bk. v. Jones* (1905), 104 A. D. 435, 93 N. Y. Supp. 768; *Scanlon v. Wallach* (1907), 102 N. Y. Supp. 1090, 53 Misc. 104; *Cassel v. Regierer* (1908), 114 N. Y. Supp. 601; *Adler v. Levinson* (1909), 120 N. Y. Supp. 67, 65 Misc. Rep. 514.

*Rhode Island*.—*Knight v. Infantry Hall Auditorium Co.* (1913), 87 Atl. 195.

*Utah*.—*National Copper Bank v. Davis Co. Bank*, 47 Utah 236, 152 Pac. 1180.

§ 115. When notice need not be given to indorser. Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

2. Where the indorser is the person to whom the instrument is presented for payment;

3. Where the instrument was made or accepted for his accommodation.<sup>1, 1a</sup>

See text, § 172.

Cross sections: 64-1, 82-3.

Corresponding provisions of English Bills of Exchange Act: 50 (2) (d).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Defect in complaint as to allegations of waiver or presentment and notice cured by answer and reply after demurrer. *De La Vergne v. Globe Printing Co.*, 27 Colo. App. 308, 148 Pac. 923.

When neither receipt of property nor admission that indorser was responsible for the note waives presentment and notice. *Jordan v. Reed*, 77 N. J. L. 584, 71 Atl. 280.

Maker's bankruptcy does not make notice to indorser unnecessary. *In re Mandelbaum*, 80 Misc. Rep. 475, 141 N. Y. Supp. 319.

Where anomalous indorser is secured by deed of trust of maker's property he can be charged without prior demand on the maker. *In re Aldred's Estate*, 229 Pa. 627, 79 Atl. 141.

Indorsement before delivery by one stockholder of the note of another stockholder for company funds is for benefit of indorser and needs no notice of dishonor. *Mercantile Bank v. Busby*, 120 Tenn. 652, 113 S. W. 390.

Notice of dishonor must be given to stockholder who indorses note of another stockholder before delivery even if funds are for company use. *Nolan v. Wilcox Co.*, 137 Tenn. 667, 195 S. W. 581.

Who entitled to notice of dishonor. *Fosdick v. Government Mineral Springs Hotel Co.*, — Wash. —, 196 Pac. 652.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Colorado*.—*De La Vergne v. Globe Printing Co.*, 27 Colo. App. 308, 148 Pac. 923.

*Connecticut*.—*Foster v. Balch* (1907), 79 Conn. 449.

*Illinois*.—*First Nat. Bk. of Lincoln v. Sandmeyer* (1911), 164 Ill. App. 98.

*Maryland*.—*Bergen v. Trimble*, 101 Atl. 137.

*Massachusetts*.—*Lankofsky v. Raymond* (1914), 104 N. E. 489; *Sweetser v. Jordan* (1914), 216 Mass. 350.

*Missouri*.—*Hawkins v. Wiest* (1912), 167 Mo. App. 439; *Overland Auto Co. v. Winters* (1915), 180 S. W. 561; *Westinghouse Electric, Etc., Co. v. Hodge*, 181 Mo. App. 232, 167 S. W. 1186.

*New Jersey*.—*Jordan v. Reed* (1908), 77 N. J. L. 584, 71 Atl. 280.

*New York*.—*Williams v. Brown* (1900), 53 A. D. 486; *Trader's Nat. Bk. v. Jones* (1905), 104 A. D. 433, 93 N. Y. Supp. 768; *In re Mandelbaum*, 80 Misc. Rep. 475, 141 N. Y. Supp. 319.

*Pennsylvania*.—*Aldred's Estate* (1911), 229 Pa. 627, 79 Atl. 141.

*Tennessee*.—*Mercantile Bank of Memphis v. Busby* (1908), 120 Tenn. 652, 113 S. W. 390; *Nolan v. H. E. Wilcox Motor Co.* (1917), 137 Tenn. 667, 195 S. W. 581.

*United States*.—*In re Swift* (1901), 106 Fed. 65; *McDonald v. Luckenback* (1909), 170 Fed. 434, 95 C. C. A. 604.

*Washington.*—Fosdick v. Government Mineral Springs Hotel Co., 196 Pac. 652.

**§ 116. Notice of non-payment where acceptance refused.** Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.<sup>1, 1a</sup>

See text, § 174.

Corresponding provision of English Bills of Exchange Act: Sec. 48 (2).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Maryland.*—Scheffenacker v. Hoopes (1910), 113 Md. 111.

*New York.*—Mt. Morris Bk. v. Twenty-Third Ward Bk. (1902), 172 N. E. 244.

*Pennsylvania.*—Colonial Tr. Co. v. Nat. Bk. of Western Pa. (1912), 50 Pa. Super. 510.

**§ 117. Effect of omission to give notice of non-acceptance.** An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.<sup>1a</sup>

See text, § 174.

The Wisconsin act (sec. 1678-47) adds: "But this shall not be construed to revive any liability discharged by such omission."

Corresponding provisions of English Bills of Exchange Act: Sec. 48 (1).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Maryland.*—Scheffenacker v. Hoopes (1910), 113 Md. 111.

*Missouri.*—Wing v. Union Cent. Life Ins. Co. (1914), 168 S. W. 917.

*New York.*—Mt. Morris Bk. v. Twenty-Third Ward Bk. (1902), 172 N. Y. 244.

**§ 118. When protest need not be made; when must be made.** Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required, except in the case of foreign bills of exchange.<sup>1, 1a</sup>

See text, § 178.

Cross sections: 152, 160, 132, 137, 129.



Corresponding provisions of English Bills of Exchange Act: Sec. 51 (1) (2); 89 (4).

In the Vermont act the following words are added to the last of this section: "But the provisions of this section shall not be held to dispense with demand and notice of dishonor as provided by sections 71 and 90."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

The fact of protest is not conclusive upon the dishonor and due notice to indorser as other evidence is competent and presents a jury question. *Demelman v. Brazier*, 198 Mass. 458, 84 N. E. 856.

Where state statutes make certificate of notary *prima facie* evidence protest is often made for its convenience in proving facts. *Eaves v. Keeton* (Mo. App.), 193 S. W. 629.

Instruments protested for convenience of proof in those states where certificate of protest is *prima facie* evidence of facts. *Scott v. Brown*, 240 Pa. 328, 87 Atl. 431.

Protest not needed. *Fosdick v. Government Mineral Springs Hotel Co.*, — Wash. —, 196 Pac. 652.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Illinois*.—*Sublette Ex. Bk. v. Fitzgerald* (1912), 168 Ill. App. 240.

*Maryland*.—*Scheffenacker v. Hoopes* (1910), 113 Md. 111.

*Massachusetts*.—*Commercial Nat. Bk. v. Clarke* (1902), 180 Mass. 249; *Demelman v. Brazier* (1907), 193 Mass. 588, 79 N. E. 812; *Demelman v. Brazier* (1908), 198 Mass. 458, 84 N. E. 856.

*Missouri*.—*Eaves v. Keeton* (Mo. App.), 193 S. W. 629.

*New York*.—*Sherman v. Eckey*, 110 N. Y. Supp. 256, 56 Misc. Rep. 216; *Mt. Morris Bk. v. Twenty-Third Ward Bk.* (1902), 172 N. Y. 244; *Congress Brewing Co. v. Habenicht* (1903), 83 A. D. 141, 82 N. Y. Supp. 481; *Howard v. Bk. of the Metropolis* (1906), 115 A. D. 326; *McBride v. Illinois Nat. Bk.* (1910), 138 A. D. 339; *Nooman & Price Co. v. E. Kwanok Realty Co.* (1910), 123 N. Y. Supp. 915; *Gens v. Hamilton* (1910), 123 N. Y. Misc. 981; *Badt v. Miller* (1912), 135 N. Y. Supp. 13, 150 A. D. 920; *Amsinck v. Rogers*, 189 N. Y. 252, 82 N. E. 134, 12 L. R. A. (N. S.) 875, 121 Am. St. Rep. 858.

*Oregon*.—*Robinson v. Holmes* (1910), 57 Oreg. 5, 109 Pac. 754.

*Pennsylvania*.—*Scott v. Brown*, 240 Pa. 328, 87 Atl. 431; *Wisner v. First Nat. Bk. of Gallitzin* (1906), 220 Pa. 21, 68 Atl. 955, 17 L. R. A. (N. S.) 1266; *Whitman v. First Nat. Bk. of Canton* (1907), 35 Pa. Super. Ct. 125; *Friedman v. Maltingsky* (1918), 103 Atl. 731.

*Rhode Island*.—*Knight v. Infantry Hall Auditorium Co.* (1913), 87 Atl. 195.

*Tennessee*.—*Am. Nat. Bk. v. Nat. Fertilizer Co.* (1911), 125 Tenn. 328, 143 S. W. 597.

*Washington*.—*Fosdick v. Government Mineral Springs Hotel Co.*, 196 Pac. 652.

## ARTICLE VIII.

### DISCHARGE OF NEGOTIABLE INSTRUMENTS.

§ 119. Instrument; how discharged.	§ 123. Cancellation; unintentional effect of.
120. When persons secondarily liable on, discharged.	124. Alteration of instrument; effect of.
121. Right of party who discharges instrument.	125. What constitutes a material alteration.
122. Renunciation by holder.	

Sections 119 to 125 above are the sections used by the commissioners.

See table of corresponding sections of the law in the various states and territories, beginning on page 360.

§ 119. Instrument; how discharged. A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor;
2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;
3. By the intentional cancellation thereof by the holder;
4. By any other act which will discharge a simple contract for the payment of money;
5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.<sup>1, 1a</sup>

See text, §§ 181, 182, 184, 189.

Cross sections: 88, 29, 123, 50, 123, 121, 120-6, 66, 109.

The Illinois act omits subdivision four.

Corresponding provision of English Bills of Exchange Act: Secs. 59 (1), 59 (3), 63 (1), (2). 61.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Maker paying note with check of his wife and having note transferred to her held a discharge as to co-makers. *Hagin v. Shoaf*, 9 Ala. App. 300, 63 So. 764.

Plaintiff knowing the payee to be the principal debtor failed to apply his deposit which was sufficient to pay the notes and thereby released the accommodation maker. *Tatum v. Commercial Bank & Trust Co.*, 193 Ala. 120, 69 So. 508.

Note transferred to maker as collateral of another debt is not discharged. *Owings Lumber Co. v. Marlowe* (Ala.), 76 So. 926.

M. made a note which was sent to A bank for collection and threw a draft on plaintiff and placed it in A bank for collection and application on note. It was not so applied. Upon discovery of fraud plaintiff entitled to moneys misapplied. *Oklahoma State Bank v. Bank of Central Arkansas* (Ark.), 179 S. W. 509.

When co-maker is not discharged as surety. *Fox v. Terre Haute Nat. Bank*, — Ind. App. —, 129 N. E. 33.

Maker who has agent purchase note from holder for the maker who reimburses agent is owner in own right regardless of holder's belief as to agent's purchase. *Sigler v. Sigler*, 98 Kan. 524, 128 Pac. 864, L. R. A. 1917A, 725.

Maker acquiring note as agent of another does not affect a discharge. *People's State Bank v. Dryden*, 91 Kan. 216, 137 Pac. 928.

Note and mortgage assigned to one of joint makers and by him assigned without recourse and the assignee assuming and agreeing to pay the note as between the makers thereof, relieved the makers of personal liability to subsequent holder. *Security State Bank v. Clarke*, 99 Kan. 18, 160 Pac. 1149.

Article 2203 of civil code as a discharge of note reading "I promise to pay for machinery sold to both" releasing makers liable in solido by written release to one by holder. *J. I. Case Threshing Machine Co. v. Budger*, 133 La. 754, 63 So. 319.

Notes of town issued by treasurer to cover default were taken up by giving renewal notes of town issued without authority held not a discharge of original notes. *Bass v. Wellesley*, 192 Mass. 526, 78 N. E. 543.

Defendant drew check which was indorsed and presented through clearing house to drawee bank after defendant stopped payment, but teller paid it by mistake. Defendant withdrew his funds from bank. Held that the teller to whom check assigned could recover from defendant. *Usher v. Tucker Co.*, 217 Mass. 441, 105 N. E. 360.

Plea that one maker was known to payee to be a surety and that an extension of time discharged him is bad. *Vanderford v. Farmers' Bank*, 105 Md. 164, 66 Atl. 47, 10 L. R. A. (N. S.) 129.

Renunciation must be in writing unless instrument delivered to party primarily liable thereon. *Whitcomb v. National Exchange Bank*, 123 Md. 612, 91 Atl. 689.

Parol evidence admissible to show plaintiff the accommodated party in his suit against accommodation maker. *Lambertson v. Love*, 165 Mich. 460, 130 N. W. 1126.

Holder's intentional destruction of note held a discharge. *Montgomery v. Schwald*, 177 Mo. App. 75, 166 S. W. 831.

Where relation of suretyship was created by independent agreements the makers were discharged by the surety's extension of time. *Citizens' Bank of Senatti v. Douglas*, 178 Mo. App. 664, 161 S. W. 601.

Accommodating indorser not discharged by a binding agreement of extension of time to the maker without the consent of the indorser. *Night & Day Bank v. Rosenbaum*, 191 Mo. App. 559, 177 S. W. 693.

Defendant surety maker assured by holder that he had funds of maker sufficient to cover indebtedness was discharged by holder extending time of payment. *Bank of Neelyville v. Lee*, 193 Mo. App. 537, 182 S. W. 1016.

Payment of note by maker to original payee without knowledge of transfer after maturity. *Steele v. Bradley* (Mo. App.), 186 S. W. 1171.

When accommodation maker not released as surety. *Merchants Natl. Bank of Billings v. Smith*, — Mont. —, 196 Pac. 523.

Whether party primarily liable, if known to the holder to be a surety only may be discharged by extension of time. *National Citizens Bank v. Toplitz*, 178 N. Y. 464.

Where drawee bank returned check to clearing house because drawer had failed, and a refund made by collecting bank to clearing house the check was not paid so as to discharge indorser. *Columbia-Knickerbocker Co. v. Miller*, 215 N. Y. 191, 109 N. E. 179.

Maker fraudulently used plaintiff's money to pay the payee of note, but as between plaintiff and the maker and indorsers the plaintiff was entitled to be subrogated to holder's rights. *Pittsburg-Westmoreland Coal Co. v. Kerr*, 220 N. Y. 137, 114 N. E. 465.

Mortgage given and accepted as collateral or payment to indorsee by payee is not a discharge of note. *Twelfth Ward Bank v. Brooks*, 63 App. Div. 220, 71 N. Y. Supp. 388.

Demand note discharged by surrender of holder upon maker's part payment and promise of balance later. *Schwartzman v. Post*, 84 N. Y. Supp. 922, 94 App. Div. 474, 87 N. Y. Supp. 872.

Indorser discharged by surrender of note to maker in exchange for renewal note, even though renewal note altered by maker. *First Nat. Bank v. Gridley*, 112 N. Y. App. Div. 398, 98 N. Y. Supp. 445.

Error to direct verdict where evidence as to purpose for which mortgage given is in dispute. *Royal Bank v. Goldschmidt*, 51 Misc. Rep. 622, 101 N. Y. Supp. 101.

Receipt from an insolvent corporation of a preferential payment of an indorsed note, contrary to the statute, is no payment and does not release indorser. *Perry v. Van Norden Trust Co.*, 118 App. Div. 228, 103 N. Y. Supp. 543.

Defendant requested the plaintiff, a second indorser, to take up note. Plaintiff paid the holder, but defendant got possession of note, but it was not discharged as against plaintiff. *Korkemas v. Macksoud*, 131 App. Div. 728, 116 N. Y. Supp. 85.

Bookkeeper's failure to apply a check to payment of note, but applied it to open account did not affect the defense of payment. *Rosenberg v. Segall*, 159 N. Y. Supp. 152.

Bank's accepting check of deposit in payment of another's note and stamping both paid, charging depositor's account and giving him the note, is payment. *Broad & Market Nat. Bank v. N. Y. & E. Realty Co.*, 102 Misc. Rep. 82, 168 N. Y. Supp. 149.

Were notes torn with intent to cancel is a jury question. *Greene v. Poz*, 182 N. Y. Supp. 900.

Defendant has burden of proving payment. *Guano Co. v. Marks*, 135 N. C. 59, 47 S. E. 127.

Burden of proof as to payment is on defendant. *Swan v. Carawan*, 168 N. C. 472, 84 S. E. 699.

An assignment of note to a third person by one of surety makers is evidence of intent not to discharge the note but to keep it alive. *Pendergraft v. Phillips* (Okla.), 156 Pac. 1189.

Other statutes as enlarging grounds of discharge of surety. *National Bank of Poteau v. Lowrey* (Okla.), 157 Pac. 103.

Maker not discharged by holder's acceptance of new note which proves invalid. *Wade v. Hall* (Okla.), 166 Pac. 720.

Accommodation makers not discharged. *Oklahoma State Bank of Sayer v. Seaton*, — Okla. —, 170 Pac. 477.

Accommodation maker who wrote "surety" after his name is not discharged by an extension of time to his co-makers without his consent. *Cellers v. Meachem*, 49 Ore. 186, 89 Pac. 426, 10 L. R. A. (N. S.) 133, 13 Ann. Cas. 997.

Accommodation indorser's discharge. *Farmers State Bank of North Powder v. Forsstrom*, — Ore. —, 173 Pac. 935.

Effect of payment without agreement of correction and refunding on a suit for reimbursement by plaintiff bank who received payment. *Monongahela Nat. Bank v. First Nat. Bank*, 226 Pa. 270, 75 Atl. 359.

Plaintiff bank received payment of check from drawee bank under an agreement of correction at any time during day, defendant could not plead discharge by payment where plaintiff sued for reimbursement. *Seaboard Nat. Bank v. Central Trust & Savings Bank*, 253 Pa. 412, 98 Atl. 607.

Stay of judgment as discharge of surety on note. *Graham v. Shephard*, 136 Tenn. 418, 189 S. W. 867.

Plaintiff and defendant joint and several makers of note for defendant's accommodation. Plaintiff paid note at maturity and was entitled to recover from defendant. *Pease v. Syler*, 78 Wash. 24, 138 Pac. 310.

Debtors become owners of note before maturity note is not discharged. *State Finance Co. v. Moore*, — Wash. —, 174 Pac. 22.

Payment to prior holder as a discharge of note against holder in due course before maturity. *Manchester v. Parsons*, 75 W. Va. 793, 84 S. W. 885.

Payment of accommodation note, after negotiation, at maturity by accommodated party discharges the note. *Comstock v. Buckley*, 141 Wis. 228, 124 N. W. 414.

Note not paid by sale of mortgage to one party and indorsement of note to another. *Glasscock v. Balls*, 24 Q. B. D. 13.

Maker gave note to payee who indorsed it against his agreement and paid the payee who obtained note from indorsee by fraud and gave it to maker, held not discharged. *Nash v. De Freville* (1900), 2 Q. B. 72.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Hagin v. Shoaf* (1913), 63 So. 764, 9 Ala. App. 300; *Montgomery Bk. & Tr. Co. v. Jackson* (1915), 67 So. 235; *Sherrill v. Merch. & Mech. Tr. & Sav. Bk.* (1916), 70 So. 723; *Tatum v. Commercial Bank & Trust Co.*, 193 Ala. 120, 69 So. 508; *Owings Lumber Co. v. Marlowe* (Ala.), 76 So. 926.

*Arizona*.—*Cowan v. Ramsay* (1914), 15 Ariz. 533, 140 Pac. 501; *Big Eye Min. & Mill Co. v. Livingston* (1918), 171 Pac. 989.

*Arkansas*.—*Mammoth Vein Coal Co. v. Bishop* (1914), 168 S. W. 1086; *Oklahoma State Bank v. Central Arkansas* (Ark.), 179 S. W. 509;

Calhoun v. Sharkey (1915), 180 S. W. 216; Tancred v. First Nat. Bk. (1916), 187 S. W. 160; Hamilton Nat. Bk. v. Emigh (1917), 192 S. W. 913; Manly Carriage Co. v. Fowler & Hill (1917), 194 S. W. 708; Peoples Sav. Bk. v. Manes (1919), 206 S. W. 315.

*California*.—Levey v. Henderson (1917), 169 Pac. 673; Hall v. Thurstont (1918), 171 Pac. 285.

*Florida*.—Peacock v. Home Life Ins. Co. (1917), 75 So. 799.

*Idaho*.—Fidelity State Bk. v. Miller (1917), 162 Pac. 244; Federal State Bk. v. Miller (1917), 162 Pac. 244.

*Indiana*.—Kelley v. York (1915), 109 N. E. 772; Fox v. Terre Haute Nat. Bank, 129 N. E. 33.

*Iowa*.—Fullerton Lumber Co. v. Snouffer (1908), 139 Iowa 176, 117 N. W. 50; Park v. Best (1916), 157 N. W. 233; McCullough v. Reynolds (1917), 165 N. W. 333.

*Kansas*.—The N. E. Nat. Bk. of Kansas City, Mo. v. Dick (1911), 84 Kans. 252, 114 Pac. 378; First Nat. Bank v. Livemore, 90 Kan. 395, 133 Pac. 734, 74 L. R. A. (N. S.) 274; Peoples State Bank v. Dryden, 91 Kan. 216, 137 Pac. 928; Citizens Bank v. Bowden, 98 Kan. 140, 157 Pac. 429; Security State Bank v. Clarke, 99 Kan. 18, 160 Pac. 1149; Niotaze State Bk. v. Cooper (1917), 162 Pac. 1169; Sigler v. Sigler (1916), 158 Pac. 864, 98 Kan. 524, L. R. A. 1917A, 725.

*Kentucky*.—Fritts v. Kirchdorfer (1910), 136 Ky. 643, 124 S. W. 882; First State Bk. of Nortonville v. Williams (1915), 164 Ky. 143, 175 S. W. 10; Smith v. Smith (1915), 178 S. W. 1058; Bk. of Willard v. Pa. & Ky. Fire Brick Co. (1917), 194 S. W. 110; Elsey v. People's Bank, 168 Ky. 701, 182 S. W. 873.

*Louisiana*.—J. I. Case Threshing Machine Co. v. Bridger (1913), 133 La. 754, 63 So. 319.

*Maryland*.—Vanderford v. Farmers Bank, 105 Md. 164, 66 Atl. 47, 10 L. R. A. (N. S.) 129; Whitcomb v. National Exchange Bank, 123 Md. 612, 91 Atl. 689; Jameson v. Citizens' Nat. Bk., 130 Md. 75, 99 Atl. 994.

*Massachusetts*.—Bass v. Wellesley, 192 Mass. 526, 78 N. E. 543; Austin v. Papanti (1908), 197 Mass. 584; Illustrated Card & Novelty Co. v. Dolan (1911), 208 Mass. 53; Usher v. Tucker Co., 217 Mass. 441, 105 N. E. 360; Union Tr. Co. v. McGinty (1912), 212 Mass. 205, 98 N. E. 679, Ann. Cas. 1913C, 525; Arlington Nat. Bk. v. Bennett (1913), 214 Mass. 352, 101 N. E. 982; Baldwin v. Porter (1914), 217 Mass. 15; Clark v. Young (1918), 120 N. E. 397.

*Michigan*.—Lambertson v. Lane, 165 Mich. 460, 130 N. W. 1126.

*Mississippi*.—Sivley v. Williamson (1916), 72 So. 1008; Davidson v. Plant (1917), 74 So. 328, 115 Miss. 482; Bass v. Borries (1918), 77 So. 189.

*Missouri*.—Lane v. Hyder (1912), 163 Mo. App. 688, 147 S. W. 514; Citizen's Bk. of Senatti v. Douglass (1913), 178 Mo. 664, 161 S. W. 601; Montgomery v. Schuald, 177 Mo. App. 75, 166 S. W. 831; Meredith v. Pemberton (1913), 170 Mo. App. 100, 156 S. W. 704; Night & Day Bank

v. Rosenbaum, 191 Mo. App. 559, 177 S. W. 693; *Shark v. Sherf* (1919), 207 S. W. 863; *Steele v. Bradley* (Mo. App.), 186 S. W. 1171; *Bank of Neelyville v. Lee*, 193 Mo. App. 537, 182 S. W. 1016; *Merchants Nat. Bk. of Billings v. Smith*, 196 Pac. 523.

*Nebraska*.—*Aurora State Bank v. Hayes-Eames Elevator Co.*, 88 Neb. 187, 129 N. W. 279; *Farmers & Mech. Bk. of Ulysses v. Tate* (1914), 147 N. W. 213; *Gillard v. Honeywell* (1919), 170 N. W. 357; *Belk v. Capital Fin. Ins. Co.* (1919), 169 N. W. 262.

*New York*.—*Twelfth Ward Bank v. Brooks*, 71 N. Y. Supp. 388, 63 A. D. 220; *National Citizens' Bank v. Toplitz*, 81 N. Y. Supp. 422, affirmed 178 N. Y. 464 (p. 313), 81 A. D. 593; *Perry v. Van Norden Trust Co.*, 103 N. Y. Supp. 543, 118 A. D. 228; *Schwartzman v. Post* (1903), 84 N. Y. Supp. 922, 94 A. D. 474, 87 N. Y. Supp. 872; *First Nat. Bk. of the City of Brooklyn v. Gridley* (1906), 112 A. D. 398, 98 N. Y. Supp. 445; *Pavenstedt v. N. Y. Life Ins. Co.* (1906), 113 A. D. 866, 99 N. Y. Supp. 614; *The Royal Bk. of N. Y. v. Goldschmidt* (1906), 51 Misc. 622, 101 N. Y. Supp. 101; *Perry v. Van Norden Tr. Co.* (1907), 10 N. Y. Supp. 543; *Korkemas v. Macksoud* (1909), 131 A. D. 728, 116 N. Y. Supp. 85; *Bainbridge v. Hoes* (1914), 149 N. Y. Supp. 20, 163 A. D. 870; *Hoch v. Bernstein* (1917), 164 N. Y. Supp. 113; *Pittsburg v. Kerr* (1917), 115 N. E. 465, 220 N. Y. 137; *Broad & Market Nat. Bk. v. Eastern Realty Co.* (1918), 168 N. Y. Supp. 149, 102 Misc. Rep. 82; *Elisberg v. Simpson* (1919), 173 N. Y. Supp. 128; *Greene v. Poz*, 182 N. Y. Supp. 900; *Wright v. Gausevoort Bank*, 103 N. Y. Supp. 548, 52 Misc. Rep. 214; *Columbia-Knickerbocker Co. v. Miller*, 215 N. Y. 191, 109 N. E. 179; *Pittsburg-Westmoreland Coal Co. v. Kerr*, 220 N. Y. 137, 114 N. E. 465; *Rosenberg v. Segall*, 159 N. Y. Supp. 152.

*North Carolina*.—*Am. Nat. Bk. of Richmond v. Hill* (1915), 85 S. E. 209; *Guano Co. v. Marks*, 135 N. Car. 59, 47 S. E. 127; *First Nat. Bk. of Lumberton v. Lennon* (1915), 86 S. E. 715; *First Nat. Bk. v. Hall* (1917), 93 S. E. 981; *Swan v. Carawan*, 168 N. Car. 472, 84 S. E. 699.

*Ohio*.—*Richards v. Market Ex. Bk.* (1910), 81 Ohio St. 348, 55 Ohio Law Bull. 20, 90 N. E. 1000, 26 L. R. A. (N. S.) 99; *First Nat. Bk. of Wellston v. Patton Co.* (1910), 32 Ohio Cir. 627.

*Oklahoma*.—*National Bank of Poteau v. Lowrey* (Okla.), 157 Pac. 103; *Ardmore State Bk. v. Lee* (1916), 159 Pac. 903; *Cleveland Nat. Bk. v. Bickel* (Okla.), 159 Pac. 302; *Ricks v. Johnson* (1917), 162 Pac. 476; *Wade v. Hall* (1917), 166 Pac. 720; *Pendergraft v. Phillips* (Okla.), 156 Pac. 1189; *Oklahoma State Bank of Sayre v. Seaton*, 170 Pac. 477.

*Oregon*.—*Cellers v. Meachem* (1907), 49 Oreg. 186, 89 Pac. 426, 10 L. R. A. (N. S.) 133; *Lumbermen's Nat. Bk. of Portland v. Campbell* (1912), 61 Oreg. 123, 121 Pac. 427; *Murphy v. Panter* (1912), 62 Oreg. 522, 125 Pac. 292; *Hunter v. Harris*, 63 Oreg. 505, 127 Pac. 786; *Farmers State Bank of North Powder v. Forstrom*, 173 Pac. 935.

*Pennsylvania*.—*Monongahela Nat. Bank v. First Nat. Bank*, 226 Pac. 270, 75 Atl. 359; *Brown v. Marmaduke* (1915), 93 Atl. 1025; *Seaboard Nat. Bank v. Central Trust & Savings Bank*, 253 Pa. 412, 98 Atl. 607.

*South Dakota*.—*Astoria State Bk. v. Markwood* (1916), 156 N. W. 583.

*Tennessee*.—*Graham v. Shephard*, 136 Tenn. 418, 189 S. W. 867.

*Texas*.—*Jackson v. Home Nat. Bk.* (1916), 185 S. W. 893.

*Utah*.—*Wostenholme v. Smith* (1908), 34 Utah 300, 97 Pac. 329; *Interstate Trust Co. v. Headlund* (1918), 171 Pac. 515.

*Washington*.—*Capitol Nat. Bk. v. Robinson* (1906), 41 Wash. 454, 83 Pac. 1021; *Bradley Engineering Co. v. Heyburn*, 56 Wash. 628, 106 Pac. 170; *Pease v. Syler* (1914), 78 Wash. 24, 138 Pac. 310; *State Finance Co. v. Moore* (1918), 174 Pac. 22; *Kelley v. Bansman* (1917), 168 Pac. 181.

*West Virginia*.—*Manchester v. Parsons* (1915), 75 W. Va. 793, 84 S. E. 885.

*Wisconsin*.—*Citizens Nat. Bk. of Green Bay v. Harter* (1908), 134 Wis. 408; *Marling v. Jones* (1909), 138 Wis. 82, 119 N. W. 931; *Comstock v. Buckley* (1910), 141 Wis. 228, 124 N. W. 414.

**§ 120. When person secondarily liable on, discharged.**  
A person secondarily liable on the instrument is discharged:

1. By an act which discharges the instrument;
2. By the intentional cancellation of his signature by the holder;
3. By the discharge of a prior party;
4. By a valid tender of payment made by a prior party;
5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved.<sup>1 1a</sup>
6. By any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument, unless the right of recourse against such party is expressly reserved.<sup>1 1a</sup>

See text, § 192.

Cross sections: 48, 119, 64-1.

In Illinois subsection 3 is omitted; to subsection 5 (Illinois subsection 4) the words "or unless the principal debtor be an accommodation party;" and in line one of subsection 6 (Illinois subsection 5) the word "an" is substituted for the word "any;" and the words "in favor of the principal debtor" are interpolated after the word "agreement" in the first sentence of said subsection, the words "prior or subsequent" are



interpolated after "assent" and at the end of the subsection the following words are added: "or unless the principal debtor be an accommodating party."

The Maryland and New York acts omit the words "unless made with the assent of the party secondarily liable, or" in subsection 6.

The Missouri act adds: "Except when such discharge is had in bankruptcy proceedings," after subdivision 3.

The Wisconsin act (Secs. 1679-1) adds a subdivision after the words, "by a prior party," which is as follows: "By giving up or applying to other purposes collateral security applicable to the debt, or, there being in the holder's hands or within his control the means of complete or partial satisfaction, the same are applied to other purposes."

The Wisconsin act substitutes for subdivision 6 the following: "By an agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument unless made with the assent, prior or subsequent, of the party secondarily liable, unless the right of recourse against such party is expressly reserved, or unless he is fully indemnified."

Corresponding provision in English Bills of Exchange Act: Intentional cancellation by holder, not in B. E. A., Sec. 63 (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Plea must show binding agreement for extension of time upon consideration to excuse indorser. *Williams v. Peninsular Grocery Co. (Fla.)*, 75 So. 517.

Guarantor of payment becomes primarily liable after default and is not released as a party secondarily liable. *Frost v. Harbert*, 20 Idaho, 336, 118 Pac. 1095, 38 L. R. A. (N. S.) 875.

When co-maker not secondarily liable. *Fox v. Terre Haute Nat. Bank*, — Ind. App. —, 129 N. E. 33.

Renewal of note works extension of time where sureties consented to extension of time without notice. *Aldrich v. Rowell (Iowa)*, 166 N. W. 88.

A payee who wrote his name on back of note under guaranty of payment clause becomes secondarily liable and is discharged by extension of time. *Farmers' & Drovers' Bank v. Bashor*, 98 Kan. 729, 160 Pac. 208.

Surety maker for co-maker not a party secondarily liable. *Niotaze State Bank v. Cooper*, 99 Kan. 731, 162 Pac. 1169.

Joint makers not sureties from provisions of note. *Nat. Bank of Webb City, Mo. v. Dickinson*, 102 Kan. 564.

Holders impairment of mortgage security releases indorsers. *Interstate Trust & Banking Co. v. Young*, 135 La. 465, 65 So. 611.

Extension of time on principal note does not affect indorsers on notes held as collateral. *Commercial Nat. Bank v. Sanders*, 139 La. 622, 71 So. 891.

An offer to prove change in marginal memoranda on note on bank book by cashier without showing his authority to so do from the bank

is inadmissible. *Vanderford v. Farmers' Bank*, 105 Md. 164, 66 Atl. 47, 10 L. R. A. (N. S.) 129.

Holder's right against anomalous indorser not affected by taking security from payee indorser after dishonor. *Commercial Nat. Bank v. Clarke*, 180 Mass. 249, 62 N. E. 370.

Holder's agreement to proceed against second indorser only does not discharge first indorser. *Bank of America v. Wilson*, 186 Mass. 214, 71 N. E. 312.

Oral evidence admissible to show secondarily liable party requested holder to release principal. *Arlington Nat. Bank v. Bennett*, 214 Mass. 352, 101 N. E. 982.

Payment for and receipt of note by a stranger is presumed a purchase thereof. *Cantrell v. Davidson*, 180 Mo. App. 410, 168 S. W. 271.

Stranger who pays and receives note is presumed to purchase it. *Wing v. Union Central Life Ins. Co.*, 181 Mo. App. 381, 168 S. W. 917.

Part payment received as full settlement by holder is discharge of indorsers. *Phenix Nat. Bank v. Hanlon*, 183 Mo. App. 243, 166 S. W. 830.

Extension without indorser's consent releases indorser although new notes given and old note retained as collateral. *Nat. Park Bank v. Koehler*, 204 N. Y. 174, 97 N. E. 468.

Surety on appeal bond not subrogated to the right of the judgment creditor as against a subsequent indorser. *State Bank v. Kahn*, 49 Misc. Rep. 500, 98 N. Y. Supp. 858.

Intentional cancellation of party's signature by holder releases without consideration. *McCormick v. Shea*, 50 Misc. Rep. 592, 99 N. Y. Supp. 467.

No right of recourse having been preserved an extension of time without indorser's assent discharges him. *Greenberg v. Ginsberg*, 143 N. Y. Supp. 1017, 82 Misc. Rep. 415.

Renewal of principal note without consent of indorser of blank note signed by maker releases indorser. *Union Trust Co. v. McCrum*, 145 App. Div. 409, 129 N. Y. Supp. 1078.

Composition in bankruptcy does not release or discharge indorsers. *Silverman v. Rubenstein*, 162 N. Y. Supp. 733.

Holder's agreement with third party does not release indorsers of note not being with debtor. *Brosemer v. Brosemer*, 99 Misc. Rep. 101, 162 N. Y. Supp. 1067.

Accommodation indorsers are released by payee giving up collateral security of greater value to the maker. *Brown Carriage Co. v. Dowd*, 155 N. C. 307, 71 S. E. 721.

Plaintiff's promise to take up and carry note did not release surety under statutes as revised. *Robertson-Ruffin Co. v. Spain* (N. C.), 91 S. E. 361.

Negotiable quality of note not destroyed by provisions waiving presentment and notice of protest and consent that time be extended. *First Nat. Bank of Pomeroy v. Buttery*, 17 N. D. 326, 116 N. W. 341, 16 L. R. A. (N. S.) 878.

A guarantor of payment is secondarily liable and released by extension of time without consent. *Northern State Bank v. Bellamy*, 19 N. D. 509, 125 N. W. 888.

This section applies only to acts of creditors and not discharges by operation of law. *Everding v. Toft*, 82 Ore. 1, 160 Pac. 1160.

Note may be taken as collateral for old note without discharge of indorser. *Second Nat. Bank v. Graham*, 246 Pa. 256, 92 Atl. 198.

Phraseology of reservation of the right of recourse should be reasonably construed. *First Nat. Bank v. Delone*, 254 Pa. 409, 98 Atl. 1042.

Agreement not to press suit while certain payments are being made discharges non-assenting indorsers. *Deahy v. Choquet*, 28 R. I. 338, 67 Atl. 421, 14 L. R. A. (N. S.) 847.

Sureties not discharged where note contains clause for extension of time and a new note is given for a larger amount and the old note held as collateral. *Dies v. Wilson Co. Bank*, 129 Tenn. 89, 165 S. W. 248, Ann. Cas. 1915A, 1090.

Holder's acceptance of money required as discount on renewal notes on condition that maker have surety sign renewal notes is not a discharge. *Hamilton Nat. Bank v. Breedon*, 130 Tenn. 465, 171 S. W. 86, L. R. A. (N. S.) 1915C, 831.

Without contradicting evidence payment and acceptance of interest in advance is evidence of intention to extend time. *Cape Charles Bank v. Farmers' Mut. Exchange*, 120 Va. 771, 92 S. E. 918.

Release of joint maker with reservation of rights as to other parties does not work discharge. *Davis v. Gutheil*, 87 Wash. 596, 152 Pac. 14.

Surety not discharged by release of a less amount of collateral security by holder. *State Bank of La Crosse v. Michel*, 152 Wis. 88, 139 N. W. 748.

New consideration necessary for waiver of discharge after knowledge thereof by accommodation indorsers. *German National Bank v. Barber*, 159 Wis. 109, 149 N. W. 767.

When giving of note in payment of old note extinguishes the debt. *In re Wegman Piano Co.*, 221 Fed. Rep. 128.

Sureties are released where renewal notes taken before maturity without their consent. *Edwards v. Goode*, 228 Fed. Rep. 664, 143 C. C. A. 186.

Agreement to wait for part if part-payment of note is made is without consideration and does not relieve accommodation indorser. *Nalitzy v. Williams*, 237 Fed. Rep. 802, 151 C. C. A. 44.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Arizona*.—*Cowan v. Ramsey* (1914), 140 Pac. 501.

*District of Columbia*.—*Walker v. Wash. Title Ins Co.*, 19 App. Cas. (D. C.) 575.

*Florida*.—*Clark v. Union Grocery Co.* (1915), 68 So. 766; *Williams v. Penn* (1917), 75 So. 517; *William v. Peninsula Grocery Co.* (1917), 75 So. 517.

*Idaho*.—*Frost v. Harbert* (1911), 20 Idaho 336, 118 Pac. 1095, 38 L. R. A. (N. S.) 875.

*Indiana*.—*Fox v. Terre Haute Nat. Bank*, 129 N. E. 33.

*Iowa*.—*Goodman Mfg. Co. v. Mammoth Vein Coal Co.* (1918), 168 N. W. 912; *Aldrich v. Powell* (Iowa), 166 N. W. 88.

*Kansas*.—*Peoples State Bank of Wellsville v. Dryden* (1914), 137 Pac. 928; *Farmers & Drovers Bank v. Bashor* (1916), 98 Kan. 729, 160

Pac. 208; *Security State Bank v. Clark* (1916), 160 Pac. 1149; *Ger-Am. St. Bank v. Watson* (1917), 163 Pac. 637; *Niotaze State Bank v. Cooper*, 99 Kan. 731, 162 Pac. 1169; *Nat. Bank of Webb City, Mo. v. Dickinson*, 102 Kan. 564.

*Kentucky*.—*First State Bk. of Nortonville v. Williams* (1915), 175 S. W. 10; *Mut. Ben. Life Ins. Co., v. First Nat. Bk.* (1914), 169 S. W. 1028.

*Louisiana*.—*Interstate Trust & Banking Co. v. Young*, 135 La. 465, 65 So. 611; *J. I. Case Threshing Machine Co. v. Bridger* (1913), 133 La. 754, 63 So. 319; *Lewy v. Wilkinson* (1914), 64 So. 1003; *Commercial Nat. Bk. v. Sanders* (1916), 139 La. 622, 71 So. 891.

*Maryland*.—*Vanderford v. Farmers & Mechanics Nat. Bk. of Westminster* (1907), 105 Md. 164, 66 Atl. 47, 10 L. R. A. (N. S.) 129.

*Massachusetts*.—*Bank of America v. Wilson*, 186 Mass. 214, 71 N. E. 312; *Commercial Nat. Bank v. Clarke*, 180 Mass. 249, 62 N. E. 370; *Union Tr. Co. v. McGinty* (1912), 212 Mass. 205, 98 N. E. 679; *Arlington Nat. Bank v. Bennett* (1913), 214 Mass. 352, 101 N. E. 982; *Paul Revere Trust Co. v. Castle* (1918), 120 N. E. 352.

*Michigan*.—*Butterfield v. Reynolds* (1917), 163 N. W. 86.

*Missouri*.—*Miners & Merchants Bank v. Rogers* (1907), 123 Mo. App. 569, 100 S. W. 534; *Lane v. Hyder* (1912), 163 Mo. App. 688, 147 S. W. 514; *Citizen's Bank of Senath v. Douglass* (1913), 161 S. W. 601; *Cantrell v. Davidson*, 180 Mo. App. 410, 168 S. W. 271; *Wing v. Union Central Life Ins. Co.*, 181 Mo. App. 381, 168 S. W. 917; *Phoenix Nat. Bank v. Hanlon*, 183 Mo. App. 243, 166 S. W. 830; *Night & Day Bank v. Rosenbaum* (1915), 177 S. W. 693; *Bank of Chillicothe v. Gundy* (1916), 189 S. W. 412.

*New Jersey*.—*Friele v. Rudiger* (1918), 104 Atl. 142.

*New Mexico*.—*First Nat. Bank of Albuquerque v. Stover* (1916), 155 Pac. 905.

*New York*.—*State Bank v. Kahn* (1906), 49 Misc. 500, 98 N. Y. Supp. 858; *McCormick v. Shea* (1906), 99 N. Y. Supp. 467, 50 Misc. 592; *Ziegfried v. Stein* (1909), 117 N. Y. Supp. 900; *Nat. Park Bank v. Koehler* (1909), 137 A. D. 785, 121 N. Y. Supp. 640; *Bloom v. Polacsek* (1910), 121 N. Y. Supp. 951; *Zimmerman v. Kastner* (1910), 123 N. Y. Supp. 952; *Union Tr. Co. of New Jersey v. McCrum* (1911), 129 N. Y. Supp. 1078, 145 A. D. 409; *Greenberg v. Ginsberg* (1913), 143 N. Y. Supp. 1017, 82 Misc. 415; *Orth v. Anderson* (1914), 146 N. Y. Supp. 689; *Union Bk v. Sullivan* (1915), 108 N. E. 558, 214 N. Y. 332; *Brosemer v. Brosemer* (1917), 162 N. Y. Supp. 1067, 99 Misc. Rep. 101; *Silverman v. Rubenstein* (1917), 162 N. Y. Supp. 733; *Nat. Park Bank v. Koehler*, 204 N. Y. 174, 97 N. E. 468.

*North Carolina*.—*Brown Carriage Co. v. Dowd*, 155 N. C. 307, 71 S. E. 721; *First Nat. Bank of Henderson v. Johnson* (1915), 88 S. E. 330; *Robertson-Ruffin Co. v. Spain* (N. C.) 91 S. E. 361.

*North Dakota*.—*First Nat. Bank of Pomeroy v. Buttery* (1908), 17 N. D. 326, 116 N. W. 341, 16 L. R. A. (N. S.) 878; *Northern State Bk. v. Bellany* (1910), 19 N. D. 509, 125 N. W. 888.

*Oklahoma.*—Bank of Commerce v. Jackson (1918), 170 Pac. 474.

*Oregon.*—Cellers v. Meachem (1907), 49 Ore. 186, 10 L. R. A. (N. S.) 133; Murphy v. Panter (1912), 62 Ore. 522, 125 Pac. 292; Peterson v. Thompson (1915), 151 Pac. 721 (1916); Everding v. Toft (1916), 82 Ore. 1, 160 Pac. 1160.

*Pennsylvania.*—First Nat. Bank of York v. Diehl (1907), 218 Pa. 588, 67 Atl. 897; In re Moritz's Estate (1913), 86 Atl. 875; Second Nat. Bank of Mechanicsburg v. Graham (1914), 246 Pa. 256, 92 Atl. 198; First Nat. Bank of Hanover v. Delone (1916), 254 Pa. 409, 98 Atl. 1042.

*Rhode Island.*—Dealey v. Choquet (1907), 28 R. I. 338, 67 Atl. 421, 14 L. R. A. (N. S.) 847.

*South Carolina.*—Bank of Inman v. Elliott (1915), 84 S. E. 996.

*South Dakota.*—Runely v. Anderson (1915), 150 N. W. 939; Wilcox v. McCain Land & Live Stock Co. (1916), 159 N. W. 49; First Nat. Bank v. Brule Nat. Bank (1917), 161 N. W. 616.

*Tennessee.*—Dies v. Wilson Co. Bank (1914), 129 Tenn. 89<sup>1</sup>, 165 S. W. 248, Ann. Cas. 1915A, 1090; Hamilton Nat. Bank v. Breeden (1914), 130 Tenn. 465, L. R. A. (N. S.) 1915C, 831, 171 S. W. 86; Graham v. Shepard (1916), 189 S. W. 867; Meredith v. Dibrell, 127 Tenn. 387, 155 S. W. 163, 46 L. R. A. (N. S.) 92, Ann. Cas. 1914B, 1079.

*Texas.*—Wills v. Tyler (1916), 186 S. W. 862.

*Utah.*—Wostenholme v. Smith (1908), 34 Utah 300, 97 Pac. 329.

*Virginia.*—Cape Charles Bank v. Farmers Mutual Exchange (1917), 120 Va. 771, 92 S. E. 918.

*Washington.*—Davis v. Byrne (1915), 152 Pac. 14; Davis v. Gutheil (1915), 152 Pac. 14, 87 Wash. 596.

*Wisconsin.*—Citizens Nat. Bank of Green Bay v. Harter (1908), 134 Wis. 408; State Bank of La Crosse v. Michel (1913), 152 Wis. 88, 139 N. W. 748; Ger. Nat. Bank v. Barber (1914), 159 Wis. 109, 149 N. W. 767.

*United States.*—In re Wegman Piano Co., 221 Fed. Rep. 128; Edwards v. Goode, 228 Fed. Rep. 664, 143 C. C. A. 186; Nalitzky v. Williams (1917), 237 Fed. 802, 151 C. C. A. 44.

§ 121. Right of party who discharges instrument. Where the instrument is paid by a party secondarily liable thereon,<sup>1</sup> <sup>1a</sup> it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and,

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.<sup>2a</sup>

See text, § 182.

Cross section: 119, 68.

Corresponding provision of English Bills of Exchange Act: Secs. 59 (2) (a) (b), 59 (3).

In Arkansas the last word is "accommodater" instead of "accommodated." This is likely a clerical error.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

One of several accommodation payees after maturity took up note from indorsee and discharged all others except maker. *Miller v. Del Rio Mining Co.*, 25 Idaho 83, 136 Pac. 448.

Indorser for payee's accommodation who pays note to holder and takes note can recover from maker. *Graves v. Neeves*, 183 Ill. App. 235.

Maker entitled to pay and be discharged by payment to payee named in note. *Gorin v. Wiley*, 215 Ill. App. 541.

Anomalous and accommodation indorsers left to rights under common law. *Lill v. Gleason*, 92 Kan. 754, 142 Pac. 287.

Anomalous indorser has no former rights on instrument and payment extinguishes note. *Quinby v. Varnum*, 190 Mass. 211, 76 N. E. 671.

Charging back of amount by company to account of plaintiff's husband was not a payment of the note which discharged defendant maker. *Bovarnick v. Davis*, — Mass. —, 126 N. E. 380.

Possession by last of accommodation indorsers presumed conclusive of payment by him entitling him to recovery against prior indorsers. *Hill v. Buchanan*, 71 N. J. Law 301, 60 Atl. 952.

Payment by subsequent indorser no defense unless prior indorser can show the payment for himself. *Twelfth Ward Bank v. Brooks*, 63 App. Div. 220, 71 N. Y. Supp. 388.

Payee obtaining check by fraud later paying indorsee who is holder in due course discharges the check as to all parties. *Josephsohn v. Gens*, 85 Misc. Rep. 372, 142 N. Y. Supp. 451.

Holder may recover from maker although payment had from a guarantor but it is for the latter. *Assets Realization Co. v. Mercantile Nat. Bank*, 167 App. Div. 757, 153 N. Y. Supp. 156.

Right of holder as to defenses existing between the drawer and acceptor. *Sobel v. Engels*, 188 N. Y. S. 436.

Possession by payee prima facie evidence of ownership although note bears his uncanceled indorsement. *Waldock v. Winkler (Okla.)*, 152 Pac. 99.

Plaintiff third party who placed a guaranty upon note, paid it without an assignment has no former rights and recovers as reimbursement. *Noble v. Beeman-Spaulding Co.*, 65 Ore. 93, 131 Pac. 1006, 46 L. R. A. (N. S.) 162.

Accommodation maker treated as party secondarily liable in suit against co-maker. *Pease v. Syler*, 78 Wash. 24, 138 Pac. 310.

<sup>2a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Idaho*.—*Miller v. Del Rio Mining Co.*, 25 Idaho 83, 136 Pac. 448.

*Indiana*.—*Parker v. First Nat. Bank of Fort Wayne* (1915), 109 N. E. 75.

*Illinois*.—*Graves v. Neeves*, 183 Ill. App. 235; *Gordin v. Wiley*, 215 Ill. App. 541.

*Kansas*.—*Lill v. Gleason* (1914), 92 Kans. 754, 142 Pac. 287.

*Massachusetts*.—*Quimby v. Varnum* (1906), 190 Mass. 211, 76 N. E. 671; *Berenson v. Conant*, 214 Mass. 127, 101 N. E. 60;; *Bovarnick v. Davis*, 126 N. E. 380.

*Missouri*.—*Cantrell v. Davidson* (1914), 168 S. W. 271; *Carter v. Butler*, 126 Mo. 306, 174 S. W. 399, Ann. Cas. 1917A, 483.

*New Jersey*.—*Hill v. Buchanan*, 71 N. J. Law 301, 60 Atl. 952; *Pohlemus v. Prudential Realty Co.* (1907), 74 N. J. L. 570, 67 Atl. 303.

*New York*.—*Twelfth Ward Bank v. Brooks*, 71 N. Y. Supp. 388, 63 A. D. 220; *The Royal Bank of New York v. Goldschmidt* (1906), 51 Misc. 622, 101 N. Y. Supp. 101; *Josephsohn v. Gens* (1914), 142 N. Y. Supp. 451, 85 Misc. Rep. 372; *Assets Realization Co. v. Mercantile Nat. Bank* (1915), 153 N. Y. Supp. 156, 167 A. D. 757; *Sobel v. Engels*, 188 N. Y. S. 436.

*Oklahoma*.—*Waldock v. Winkler* (Okla.), 152 Pac. 99.

*Oregon*.—*Noble v. Breeman-Spaulling-Woodward Co.* (1913), 65 Ore. 93, 131 Pac. 1006, 46 L. R. A. (N. S.) 162.

*Washington*.—*Pease v. Syler* (1914), 78 Wash. 24, 138 Pac. 310.

§ 122. **Renunciation by holder.** The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument, discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.<sup>1</sup> 1a

See text, § 191.

Cross section: 120.

Corresponding provision of English Bill of Exchange Act: Sec. 62 (1), (2);

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Indorsement and delivery constituting present gift of principal with reservation of interest during life. *Pyle v. East*, 173 Iowa 165, 155 N. W. 283.

Application of term "renunciation." *Whitcomb v. National Exchange Bank*, 123 Md. 612, 91 Atl. 689.

Refusal of co-maker's tender is not a renunciation of holder's rights against him for balance after principal maker's bankruptcy estate settled. *Jamesson v. Citizens' Nat. Bank*, 130 Md. 75, 99 Atl. 994.

Holders' covenant not to sue maker and reserving rights as to indorsers does not discharge indorsers although members of firm maker. *Faneuil Hall Nat. Bank v. Meloon*, 183 Mass. 66, 66 N. E. 410, 97 Am. St. Rep. 416.

Renunciation of debt by holder. *Dickinson v. Vail*, 199 Mo. App. 458.

Writing addressed to executors expressing wish that note be cancelled in case of his death, found after death, is not a valid renunciation. *Leask v. Dew*, 102 App. Div. 529, 92 N. Y. Supp. 891.

Release of surety by immediate part payment agreement is good if in writing. *Baldwin v. Daly*, 41 Wash. 416, 83 Pac. 724.

Renunciation in favor of surety upon part payment agreement must be in writing. *Pitt v. Little*, 58 Wash. 355, 108 Pac. 941.

Plaintiff can waive provision for renunciation being in writing and may claim novation. *Gimmet v. Greene*, 87 Wash. 40, 151 Pac. 99.

Release of one joint maker with reservation of rights as to others is not an absolute and unconditional renunciation but only as to one released. *Davis v. Gutheil*, 87 Wash. 596, 152 Pac. 14.

Oral evidence of holder's promise to return to maker note made without consideration, and so known to holder, is competent. *Hornburg v. Larson*, 93 Wash. 74, 160 Pac. 11.

Memorandum written by nurse at dictation of holder, prior to death not a renunciation but expression of desire or wish to renounce. *In re George*, 44 Ch. D. 627.

Maker's devisee not within the term maker as party to whom renunciation can be made. *Edwards v. Walters* (1896), 2 Ch. 157.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Iowa*.—*Pyle v. East*, 173 Iowa 165, 155 N. W. 283.

*Louisiana*.—*J. I. Case Threshing Machine Co. v. Bridger* (1913), 133 La. 754, 63 So. 319.

*Massachusetts*.—*Faneuil Hall Nat. Bank v. Meloon* (1903), 183 Mass. 66, 66 N. E. 410; 97 Am. St. Rep. 416.

*Maryland*.—*Whitcomb v. Nat. Exch. Bank* (1914), 91 Atl. 689, 123 Md. 612; *Jamesson v. Citizens' Nat. Bank*, 130 Md. 75, 99 Atl. 994.

*Missouri*.—*Dickinson v. Vail* (1918), 199 Mo. App. 458, 203 S. W. 635.

*New York*.—*Leask v. Dew* (1905), 102 A. D. 529, 92 N. Y. Supp. 891; *Broad & Market Nat. Bank v. N. Y. & E. Realty Co.*, 168 N. Y. Supp. 149, 102 Misc. Rep. 82.

*Oklahoma*.—*Campbell v. Newton & Driskoll* (1915), 152 Pac. 841.

*Oregon*.—*Cellars v. Meachem* (1907), 49 Ore. 186, 10 L. R. A. (N. S.) 133.



*Washington*.—*Baldwin v. Daly* (1906), 41 Wash. 416, 83 Pac. 724; *Pitt v. Little* (1910), 58 Wash. 355, 108 Pac. 941; *Gimmet v. Greene* (1915), 151 Pac. 99, 87 Wash. 40; *Davis v. Gutheil*, 87 Wash. 596, 152 Pac. 14; *Hornburg v. Larson*, 93 Wash. 74, 160 Pac. 11.

**§ 123. Cancellation; unintentional; burden of proof.** A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.<sup>1</sup> <sup>1a</sup>

See text, § 184.

Cross sections: 120-2, 66, 109, 119-5, 1-4.

The Illinois Act changes this some.

Corresponding provision of English Bill of Exchange Act: Sec. 63 (3).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Burden is on plaintiff to overcome apparent cancellation. *Morris v. Reyman*, 55 Ind. App. 112, 103 N. E. 423.

Plaintiff has burden of overcoming the presumption arising from apparent cancellation of notes. *In re Philpott's Estate* (Iowa), 164 N. W. 167.

Erasure of their names by part of the indorsers without the knowledge of others was inoperative and did not affect the indorsement of those who did not take part in the erasure. *Union Bank of Brooklyn v. Sullivan*, 214 N. Y. 332, 108 N. E. 558.

Constitutionality of section. *Gilley v. Harrell*, 118 Tenn. 115, 101 S. W. 424.

Where date and signature destroyed by burning, it is presumed to be intentional for cancellation. *Jones' Adm'rs. v. Coleman* (Va.), 92 S. E. 910.

Cancellation inoperative where agent accepted less than amount due and principal returned the money and received back the note. *Dominion Bank v. Anderson*, 15 Sess. Cas. (1888) 408.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Illinois*.—*Fry v. Jenkins* (1912), 173 Ill. App. 486.

*Indiana*.—*Morris v. Reyman*, 55 Ind. App. 112, 103 N. E. 423.

*Iowa*.—*In re Philpott's Estate* (Iowa), 164 N. W. 167.

*Kansas*.—*Holyfield v. Harrington* (1911), 84 Kans. 760, 115 Pac. 546.

*New York*.—*First Nat. Bank of the City of Brooklyn v. Gridley* (1906), 112 A. D. 398, 98 N. Y. Supp. 445; *McCormick v. Shea* (1906),

99 N. Y. Supp. 467, 50 Misc. 592; *Union Bank v. Sullivan* (1915), 214 N. Y. 332, 108 N. E. 558.

*Tennessee*.—*Gilley v. Harrell* (1906), 118 Tenn. 115, 101 S. W. 424.

*Virginia*.—*Jones Admrs. v. Coleman* (1917), 92 S. E. 910.

§ 124. **Alteration of instrument; effect of.** Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.<sup>1</sup> 1a

See text, §§ 144, 188.

Cross sections: 66, 109, 119-5, 29, 125, 64-1, 25, 52, 9-5, 16, 56, 191.

The first part of the first sentence in Illinois reads as follows: "Where a negotiable instrument is fraudulently or materially altered by the holder without the assent etc."

In the South Dakota act the words: "by the holder" are added after the word "altered" in the first sentence.

The Wisconsin Act (Sec. 1679-5) inserts after "assented" "orally or in writing."

Corresponding provision of the English bills of exchange act: Sec. 64 (1);

<sup>1</sup>Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Holder in due course may recover according to original tenor of altered instrument. *Green v. Harsh*, — Ala. —, 86 So. 392.

Burden of proof as to alteration depends upon its being apparent. *Arnold v. Wood*, 127 Ark. 234, 191 S. W. 960.

Circumstances admissible to show alteration of note. *Hamilton Nat. Bank v. Emigh* (Ark.), 192 S. W. 913.

Giving up of forged note no consideration for note altered after payment. *Fairfield Co. Nat. Bank v. Hammer*, 89 Conn. 592, 95 Atl. 31.

Indorsement of payment on back of note not alteration. *Bland v. Fidelity Trust Co.*, 71 Fla. 499, 71 So. 630.

Jury must consider evidence other than note itself in determining when alteration made. *Peterson v. Emery*, 154 Ill. App. 294.

Change of date by a stranger without holder's knowledge does not prevent recovery. *Fry v. Jenkins*, 173 Ill. App. 486.

A change of time of payment upon face of note is alteration, but all parties agreeing they are bound by it. *Holyfield v. Harrington*, 84 Kan. 760, 115 Pac. 546, 39 L. R. A. (N. S.) 131.

Effect of innocent alteration. *Edington v. McLeod*, 87 Kan. 426, 124 Pac. 163, 41 L. R. A. (N. S.) 230.

Insertion of interest clause by co-maker is a material alteration. *White v. Shephard*, 140 Ky. 349, 131 S. W. 17.

Where note attached to contract providing for detachment by payee is detached. *Robertson v. Commercial Security Co.*, 152 Ky. 336, 153 S. W. 450.

Purchasers knowledge that note was detached from contract providing for detachment does not affect validity. *Pratt v. Rounds*, 160 Ky. 358, 169 S. W. 848.

Holder must explain apparent or proven alteration. *Harrison v. Percy*, 174 Ky. 485, 192 S. W. 513.

Alteration by stranger as avoiding a negotiable instrument. *Jeffrey v. Rosenfeld*, 179 Mass. 506, 61 N. E. 49.

Maker stole note indorsed by payee, altered it and negotiated it to holder in due course. *Massachusetts Nat. Bank v. Snow*, 187 Mass. 159, 72 N. E. 959.

Recovery upon original tenor by holder in due course where alteration appears. *Thorpe v. White*, 188 Mass. 333, 74 N. E. 592.

No exception lies to court's exercise of its discretion in admitting note without explanation of apparent alterations. *Wood v. Shelley*, 196 Mass. 114, 81 N. E. 872.

Fraudulent alteration extinguishes obligation and invalidates note. *Sherman v. Connecticut Mut. Life Ins. Co.*, 222 Mass. 159, 110 N. E. 159.

Alteration by change of payee's name prevents recovery. *Andrews v. Sibley*, 220 Mass. 10, 107 N. E. 395.

Where note blank as to payee was fraudulently altered by intended payee and negotiated, recovery can not be had. *Tower v. Stanley*, 220 Mass. 429, 107 N. E. 1010.

Court declined to decide holder's rights where maker willing to pay as per original tenor of note. *Munroe v. Stanley*, 220 Mass. 438, 107 N. E. 1012.

Payee's erasure of his name and increasing amount renders note not enforceable. *Stone v. Sargent*, 220 Mass. 445, 107 N. E. 1014.

Alteration in date presumed to be made before delivery, nothing suspicious appearing. *Ensign v. Fogg*, 177 Mich. 317, 143 N. W. 82.

Accommodation maker liable only for original tenor where note altered by accommodated maker. *Public Bank v. Knox-Burchard Co.* (Minn.), 160 N. W. 667.

Erasure of conjunctive "and" and insertion of "or" between persons required to indorse before payment is material alteration. *Trustees of German, etc., Congregation v. Merchants' Nat. Bank* (Minn.), 165 N. W. 491.

Fraudulent alteration prevents recovery. *Bank of Flat River v. Walton*, 187 Mo. App. 621, 173 S. W. 56.

Depositor responsible for signing blank checks which may be stolen and completed. *S. S. Allen Grocery Co. v. Bank of Buchanan Co.*, 192 Mo. App. 476, 182 S. W. 777.

Detachment of agreement glued to accepted bill as alteration. *Bothell v. Schweitzer*, 84 Neb. 271, 120 N. W. 1129, 22 L. R. A. (N. S.) 263.

Burden of proving alteration is upon defendant. *Teske v. Baumgart*, 99 Neb. 479, 156 N. W. 1044.

Check with printed words "Not good for more than \$15," called for \$37.98, is good for the amount authorized. *Marshall & Co. v. Kirschbraun & Louis*, 100 Neb. 876.

Interliniation of waiver of service of protest is alteration. *Stanford v. Stanford* (N. J.), 101 Atl. 388.

Accommodation indorser liable only in amount stated prior to maker's alteration. *Packard v. Windholz*, 88 App. Div. 365, 84 N. Y. Supp. 666; affirmed 180 N. Y. 549.

Accommodation indorser not liable where maker alters note by increasing the amount by filling blank spaces. *National Exchange Bank v. Lester*, 194 N. Y. 461, 87 N. E. 79.

Drawer's loss caused by payees false representation rather than by change of date on check alleged to be lost. *Moskowitz v. Deutsch*, 46 Misc. Rep. 603, 92 N. Y. Supp. 721.

Alteration in New York is governed by laws of New York. *Colonial Nat. Bank v. Duerr*, 108 App. Div. 215, 95 N. Y. Supp. 810.

When mere inspection shows alteration one is not purchaser in due course. *Elias v. Whitney*, 50 Misc. Rep. 326, 98 N. Y. Supp. 667.

Question as to negligence of leaving blank spaces which can be filled in check to add to the amount is for jury. *Timbell v. Garfield Nat. Bank*, 121 App. Div. 870, 106 N. Y. Supp. 497.

Addition of interest clause is material alteration affecting note. *Witteman v. Glass*, 117 N. Y. Supp. 940.

Depositors duty as to blank spaces on his checks. *Trust Co. of America v. Conklin*, 65 Misc. Rep. 1, 119 N. Y. Supp. 367.

Drawer of check in blank owes no duty to purchaser of same after filled in. *Limick v. Nutting & Co.*, 140 App. Div. 262, 125 N. Y. Supp. 93.

Plaintiff must explain all apparent alterations. *Eisner v. Crommette*, 151 N. Y. Supp. 3.

Holder of note signed in blank and stolen can not recover. *Holzman, Cohen & Co. v. Teague*, 156 N. Y. Supp. 290.

Addition of word "hundred" by a clerk upon a note secured by a mortgage, the sum stated after the addition to the note did not invalidate. *Donneybrook State Bank v. Corbett* (N. D.), 163 N. W. 275.

Extension of time is not an alteration. *Richards v. Market Exch. Bank Co.*, 81 Ohio St. 348, 90 N. E. 1000, 26 L. R. A. (N. S.) 99.

Defendant admitting signature of note regular in form has burden of proving alteration. *Cavitt v. Robertson*, 42 Okla. 619, 142 Pac. 299.

Burden of showing Maker's consent is upon holder admitting alteration. *West v. Naten* (Okla.), 152 Pac. 342.

Defendant pleading material alteration has burden of proof. *Kapp v. Levyson* (Okla.), 160 Pac. 457.

Detaching note from contract where attached by perforations not alteration. *Conqueror Trust Co. v. Simmon* (Okla.), 162 Pac. 1098.

"Negligence of drawer of blank check is for jury." *Snyder v. Corn Exchange Nat. Bank*, 221 Pa. 599, 70 Atl. 876.

Where no apparent alteration and no evidence of such no question for jury upon alteration. *Brown v. Marmaduke*, 248 Pa. 252, 93 Atl. 1021, 1023.

Plea of non est factum on ground of alteration puts burden of proof on defendant. *Peevey v. Buchanan*, 131 Tenn. 24, 173 S. W. 447.

No recovery by payee on notes fraudulently altered. *Columbia Grocery Co. v. Marshall*, 131 Tenn. 270, 174 S. W. 1108.

Presumptions that stamping of waiver of protest was placed on before delivery. *Farmers' & Stockgrowers Bank v. Pahvant Valley Land Co.* (Utah), 165 Pac. 462.

No recovery had where discounting bank was party to alteration of note. *Washington Finance Corp. v. Glass*, 74 Wash. 653, 134 Pac. 480, 46 L. R. A. (N. S.) 1043.

Where note altered in favor of maker and he makes no objection, note is held to be valid. *Harper v. Clear Fork Co.* (W. Va.), 92 S. E. 565.

Material alteration before passage of negotiable instruments law affects the recovery. *Hecht v. Shenners*, 126 Wis. 27, 105 N. W. 359.

Authority to fill blanks not authority to change place of payment designated. *First Nat. Bank. v. Barnum*, 160 Fed. 245.

Application to material alteration after maturity. *Pensacola State Bank v. Melton*, 210 Fed. Rep. 57.

Party offering note with material and suspicious alteration must give evidence to explain the condition. *Ofenstein v. Bryan*, 20 App. D. C. 1.

Suspicious character of alteration is for court and question as to when made for the jury. *Towles v. Tanner*, 21 App. D. C. 530.

When leaving of spaces which can be filled is violation of customer's duty to bank. *Scholfield v. Londesborough* (1896), A. C. 514.

Recovery in suit for return of money paid on certified check altered and in hands of holder in due course. *Imperial Bank v. Bank of Hamilton* (1903), A. C. 49.

Customer's duty to bank as to blank spaces in check and jury's finding. *Colonial Bank of Australasia v. Marshall* (1906), A. C. 559, Privy Council.

Effect of employee adding words and figures to check of his employer and absconding with money. *London Joint Stock Bank v. Macmillan* (1918), A. C. 777.

Alteration is apparent if bank can point it out to holder. *Leeds & County Bank v. Walker*, 11 Q. B. D. 84.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Bledsoe v. City Nat. Bank*, 7 Ala. App. 195, 60 So. 942; *Green v. Harsh*, 86 So. 392.

*Arkansas*.—*Arnold v. Wood* (1917), 127 Ark. 234, 191 S. W. 960; *Hamilton Nat. Bank v. Emigh* (Ark.), 192 S. W. 913.

*California*.—*Smith v. Hirst* (1917), 163 Pac. 334, 32 Cal. App. 507.

*Colorado*.—*Ayres v. Walker* (1913), 54 Colo. 571.

*Connecticut*.—*Fairfield Co. Nat. Bank v. Hammer* (1915), 87 Conn. 592, 95 Atl. 31.

*Florida*.—*Bland v. Fidelity Trust Co.*, 71 Fla. 499, 71 So. 630.

*Illinois*.—*Peterson v. Emery* (1910), 154 Ill. App. 294; *Fry v. Jenkins* (1912), 173 Ill. App. 486.

*Iowa*.—*Johnston v. Hoover* (1908), 139 Iowa 143, 117 N. W. 277.

*Kansas*.—*McCormick Harvesting Machine Co. v. Lauber* (1898), 7 Kans. Ct. of App. 739; *New York L. Ins Co. v. Martindale* (1907), 75 Kans. 142, 88 Pac. 559, 121 Am. St. 362; *Holyfield v. Harrington* (1911), 84 Kans. 760, 115 Pac. 546; *Fisher v. Spillman* (1911), 85 Kans. 552; *Edington v. McLeod* (1912), 87 Kans. 426, 124 Pac. 163, 41 L. R. A. (N. S.) 230.

*Kentucky*.—*Stanley v. Davis*, 32 Ky. L. 1135, 107 S. W. 773; *Diamond Distilleries Co. v. Gott* (1910), 137 Ky. 585, 126 S. W. 131; *White v. Shepherd* (1910), 140 Ky. 349, 131 S. W. 17; *Tyler v. First Nat. Bank*

of Winslow (1912), 150 Ky. 515; Robertson v. Commercial Security Co. (1913), 152 Ky. 336, 153 S. W. 450; Aud v. McElvoy (1917), 197 S. W. 824; Commercial Bank v. Arden (1917), 197 S. W. 951; Pratt v. Rounds, 160 Ky. 358, 169 S. W. 848; Harrison v. Pearcy, 174 Ky. 485, 192 S. W. 513.

*Massachusetts.*—Stone v. Sargent, 220 Mass. 445, 107 N. E. 1014; Mass. Nat. Bank v. Snow, 187 Mass. 159, 72 N. E. 959; Andrews v. Sibley, 220 Mass. 10, 107 N. E. 395; Jeffrey v. Rosenfield (1901), 179 Mass. 506; 61 N. E. 421; Thorpe v. White (1905), 188 Mass. 333, 74 N. E. 592; Wood v. Shelley (1907), 196 Mass. 114, 81 N. E. 872; Tower v. Stanley (1915), 220 Mass. 429, 107 N. E. 1010; Broadway Nat. Bank v. Hefferman, 220 Mass. 247, 107 N. E. 921; Sherman v. Connecticut Mut. Life Ins. Co., 222 Mass. 159, 110 N. E. 159; Munroe v. Stanley, 220 Mass. 438, 107 N. E. 1012.

*Michigan.*—Ensign v. Fogg (1913), 177 Mich. 317, 143 N. W. 82,

*Missouri.*—Bank of Flat River v. Walton, 187 Mo. App. 621, 173 S. W. 76; Clifford Banking Co. v. Donovan Co., 195 Mo. App. 262, 94 S. W. 527; S. S. Allen Grocery Co. v. Bank of Buchanan Co., 192 Mo. App. 476, 182 S. W. 777.

*Minnesota.*—Public Bk. of N. Y. v. Burchard Mer. Co. (1916), 160 N. W. 667; Trustees of German, etc., Congregation v. Merchants Nat. Bk. (Minn.) 165 N. W. 491.

*Nebraska.*—Bothell v. Schweitzer (1909), 84 Neb. 271, 120 N. W. 1129, 22 L. R. A. (N. S.) 263; Bothell v. Miller (1910), 87 Neb. 835; Marshall & Co. v. Kirschbaum & Louis, 100 Neb. 876; Teske v. Baumgart, 99 Neb. 479, 156 N. W. 1044.

*New Hampshire.*—Bisbee v. Pulpit Farm Dairy (1917), 100 Atl. 672.

*New Jersey.*—Stanford v. Stanford (1917), 101 Atl. 388.

*New York.*—Critten v. Chemical Nat. Bk. (1901), 60 A. D. 241; Mut. Loan Assn. v. Lesser (1902), 76 A. D. 614, 78 N. Y. Supp. 629; Merchants Bank v. Brown (1903), 86 A. D. 599, 83 N. Y. Supp. 1037; Packard v. Windholz (1903), 40 Misc. 347, affirmed 88 A. D. 365; 180 N. Y. 549; Birmingham Tr. Co. v. Whitney (1904), 95 A. D. 280, 88 N. Y. Supp. 578; Moskowitz v. Deutsch (1905), 46 Misc. 603, 92 N. Y. Supp. 721; 603; Moskowitz v. Deutsch (1905), 46 Misc. 603, 92 N. Y. Supp. 721; Colonial Nat. Bank v. Duerr (1905), 108 A. D. 215, 95 N. Y. Supp. 810; Colonial Nat. Bank of City of Brooklyn v. Gridley (1906), 112 A. D. 398, 98 N. Y.; Elias v. Whitney (1906), 98 N. Y. Supp. 667, 50 Misc. 326; Smith v. State Bank (1907), 54 Misc. 550, 104 N. Y. Supp. 750; Timbel v. Garfield Nat. Bk. (1907), 121 A. D. 870, 106 N. Y. Supp. 497; Nat. Ex. Bk. of Albany v. Lester (1909), 194 N. Y. 461, 87 N. E. 79; Witterman v. Glass (1909), 117 N. Y. Supp. 940; Usefof v. Herzenstein (1909), 65 Misc. 45, 119 N. Y. Supp. 290; Trust Co. of Am. v. Conklin (1909), 65 Misc. 1, 119 N. Y. Supp. 367; Eisner v. Crommette, 151 N. Y. Supp. 3; Holzman, Cohen & Co. v. Teague, 156 N. Y. Supp. 290; Limick v. Nutting & Co., 125 N. Y. Supp. 93, 140 A. D. 262.

*North Dakota.*—Sawyer State Bank v. Sutherland (1917), 162 N. W. 696; Donnellybrook State Bank v. Corbett (N. D.) 163 N. W. 275.

*Ohio*.—Hoffman v. Wiedeman Brewing Co. (1910), 31 Ohio Cir. Ct. 609; Richards v. Market Exch. 81 Ohio St. 348, 90 N. E. 1000, 26 L. R. A. (N. S.) 99.

*Oklahoma*.—Commonwealth Nat. Bank of Dallas v. Baughman (1910), 27 Okla. 175, 111 Pac. 332; Barrett v. Effenber (1911), 29 Okla. Sup. Ct. 679; Cox v. Kirkwood (1916), 158 Pac. 930; Kapp v. Levysen (Okla.), 160 Pac. 457; Cavitt v. Robertson, 42 Okla. 619, 142 Pac. 299; West v. Naten (Okla.), 152 Pac. 342; Zehr v. Champlin (1916), 159 Pac. 118; Conqueror Trust Co. v. Simmon (1917), 162 Pac. 1098.

*Pennsylvania*.—Snyder v. Commercial Ex. Nat. Bank (1908), 221 Pa. 599, 70 Atl. 876; Brown v. Marmaduke, 248 Pa. 252, 93 Atl. 1021, 1023.

*Rhode Island*.—Abram v. Greer (1913), 88 Atl. 884.

*Tennessee*.—Moss v. Maddux (1902), 108 Tenn. 405; Peevey v. Buchanan, 131 Tenn. 27, 173 S. W. 447; Columbia Grocery Co. v. Marshall, 131 Tenn. 270, 174 S. W. 1108.

*Texas*.—Landon v. Halcomb (1916), 184 S. W. 1098.

*Utah*.—Wostenholme v. Smith (1908), 34 Utah, 300, 97 Pac. 329; Farmers & Stock Growers' Bank v. Pahvant Valley Land Co. (1917), 165 Pac. 462.

*Virginia*.—Hoffman v. Planter's Nat. Bank (1901), 99 Va. 480, 39 S. E. 134; Am. Bank of Orange v. McComb (1906), 105 Va. 473, 54 S. E. 14; Nottingham v. Ackiss (1907), 107 Va. 63, 57 S. E. 592.

*Washington*.—Washington Finance Corporation v. Glass (1913), 74 Wash. 653, 134 Pac. 480, 46 L. R. A. (N. S.) 1043; Davis v. Byrne (1916), 152 Pac. 14; Lombardo v. Lombardini (1910), 57 Wash. 352, 106 Pac. 907; Pitt v. Little (1910), 58 Wash. 355, 108 Pac. 941.

*West Virginia*.—Harper v. Clear Fork Co. ( W.Va.), 92 S. E. 565.

*Wisconsin*.—Hecht v. Shenners (1905), 126 Wis. 27, 105 N. W. 309.

*United States*.—First Nat. Bank of Wilkesbarre v. Barnum (1908), 160 Fed. 245; First Nat. Bank of Shenandoah v. Linver (1911), 187 Fed. 16, 109 C. C. A. 70; Towles v. Tanner (1903), 21 App. D. C. 530; Pensacola State Bank v. Melton (1913), 210 Fed. 57.

§ 125. What constitutes a material alteration. Any alteration which changes:

1. The date;
2. The sum payable, either for principal or interest;
3. The time or place of payment;
4. The number or the relations of the parties;

5. The medium or currency in which payment is to be made; or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.<sup>1, 1a</sup>

See text, § 188.

Cross sections: 13, 14, 64, 28, 124.

Corresponding provision of English Bills of Exchange Act: 64 (2) omits words "either for principal or interest";

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Legal import not changed by filling in rate of interest in blank. *Haas v. Commerce Trust Co.*, 194 Ala. 672, 69 So. 894.

Substitution of word "bearer" for "order" is material alteration of note. *Builders' Lime & Cement Co. v. Weimer*, 170 Iowa 444, 151 N. W. 100, Ann Cas. 1917C, 1174.

Addition of an indorser before delivery to payee is not a material alteration releasing a prior indorser. *Devoy & Kuhn Coal Co. v. Huttig*, 174 Iowa 357, 156 N. W. 413.

Changing "I promise" to "We promise" where signed by two makers is not material and does not avoid note. *Stanley v. Davis*, 32 Ky. Law Rep. 1135, 107 S. W. 773.

Addition of "Pt." to name of payee is material and releases maker who wrote "surety" after his name. *Tyler v. First Nat. Bk.*, 150 Ky. 515, 150 S. W. 665.

Alteration should be described in a bill in equity for relief therefrom. *Jeffrey v. Rosenfeld*, 179 Mass. 506, 61 N. E. 49.

Annexing revenue stamp when not an alteration. *Rowe v. Bowman*, 183 Mass. 488, 67 N. E. 636.

Adding interest clause is material alteration. *Broadway Nat. Bank v. Hefferman*, 220 Mass. 247, 107 N. E. 921.

Indorsement by stranger to note not alteration. *Ensign v. Fogg*, 177 Mich. 317, 134 N. W. 82.

Pencil addition of indorser's address for record purposes by bank is not an alteration which relieves indorser. *Merchants Bank of Canada v. Brown*, 86 App. Div. 599, 83 N. Y. Supp. 1037.

Addition of "cash" to indorsee's name not material where agreed that note should be discounted at bank where indorsee was cashier. *Birmingham Trust Co. v. Whitney*, 95 App. Div. 280, 88 N. Y. Supp. 578.

"With interest" added to note is material alteration. *Columbia Distilling Co. v. Rech*, 151 App. Div. 128, 135 N. Y. Supp. 206.

Payee's addition of words "with interest" with authority of maker is valid. *Levy v. Arons*, 81 Misc. 165, 142 N. Y. Supp. 312.

Filling in blank on note margin showing extension of time in accordance with agreement with maker not alteration. *Eaton v. Delay*, 32 N. D. 328, 155 N. W. 644, L. R. A. 1916D, 528.

Writing "protest waived" above indorsement is material alteration of indorsement. *Sawyer State Bank v. Sutherland*, 36 N. D. 493, 162 N. W. 696.

Alteration in the maturity of note is material. *Palomcki v. Laurell* (Ore.), 168 Pac. 935.



Addition of name of witness to sureties' signature is material alteration. *Swank v. Kaufman*, 255 Pa. 316, 99 Atl. 1000, L. R. A. 1917D, 826.

Filling in payee's name and date but changing month is not material alteration as to accommodation makers. *Holman v. Higgins*, 134 Tenn. 387, 183 S. W. 1008, L. R. A. 1916F, 1263.

Change of name of payee is material alteration. *Hoffman v. Planters' Nat. Bank*, 99 Va. 480, 39 S. E. 134.

Where note recited that it was due in 1903, and was payable one year after October 24, 1892, alteration of date to 1903 not material. *Lombardo v. Lombardini*, 57 Wash. 352, 106 Pac. 907, 32 L. R. A. (N. S.) 515.

Addition of another maker is material alteration as to prior makers. *Handsaker v. Pederson*, 71 Wash. 218, 128 Pac. 230.

Addition of figure increasing amount of check is material alteration. *Lawless v. State*, 114 Wis. 189, 89 N. W. 891.

Where bank named had ceased to exist and now operated under another name, the change of name to present name not material. *Melton v. Pensacola Bank*, 190 Fed. Rep. 126, 111 C. C. A. 166.

Effect of striking out "order" where statute does not require instrument to be payable to order. *Meyer v. Decroix* (1891), A. C. 520.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Crawford v. Simonton*, 163 Ala. 609, 50 So. 1024; *Haas v. Commerce Trust Co.*, 194 Ala. 672, 69 So. 894.

*California*.—*Smith v. Hirst* (1917), 163 Pac. 334, 32 Cal. App. 507.

*Colorado*.—*Ayres v. Walker* (1913), 54 Colo. 571, 131 Pac. 384.

*Illinois*.—*Fry v. Jenkins* (1912), 173 Ill. App. 486.

*Iowa*.—*Devoy & Kuhn Coal Co. v. Huttig*, 174 Iowa 357, 156 N. W. 413; *Builder's Lime & Cement Co. v. Weimer*, 170 Iowa 444, 151 N. W. 100, Ann. Cas. 1917C, 1174.

*Florida*.—*Gamble v. Malsby* (1914), 64 So. 437.

*Kansas*.—*Holyfield v. Harrington* (1911), 84 Kans. 760, 115 Pac. 546; *Fisher v. Spillman* (1911), 85 Kans. 552; *Edington v. McLeod* (1912), 87 Kans. 426, 124 Pac. 163, 41 L. R. A. (N. S.), 230.

*Kentucky*.—*Mitchell v. Reed's Exr.*, 32 Ky. Law Rep. 683, 106 S. W. 833; *Tyler v. First Nat. Bank of Winslow* (1912), 150 Ky. 515, 150 S. W. 665; *Stanley v. Davis*, 32 Ky. Law Rep. 1135, 107 S. W. 773.

*Massachusetts*.—*Jeffrey v. Rosenfeld* (1901), 179 Mass. 506; 61 N. E. 49; *Rowe v. Bowman* (1903), 183 Mass. 488, 67 N. E. 636; *Broadway Nat. Bank of Chelsea v. Hefferman* (1915), 220 Mass. 247, 107 N. W. 921; *Lewis v. Blume* (1917), 116 N. E. 271.

*Michigan*.—*Ensign v. Fogg* (1913), 177 Mich. 317, 143 N. W. 82.

*Minnesota*.—*Kiefer v. Tolbert* (1915), 151 N. W. 529, *Spiering v. Spiering* (1917), 164 N. W. 583.

*Montana*.—*State v. Milton* (1908), 37 Mont. 366, 96 Pac. 926.

*New Jersey*.—Stanford v. Stanford (1917), 101 Atl. 388.

*New York*.—Colonial Nat. Bank v. Duerr, 95 N. Y. Supp. 810, 108 A. D. 215; Witterman v. Glass (1909), 117 N. Y. Supp. 940; Merchants' Bank of Canada v. Brown, 86 App. Div. 599, 83 N. Y. Supp. 1037; Birmingham Tr. Co. v. Whitney (1904), 95 A. D. 280, 88 N. Y. Supp. 578; Dumbrow v. Gelb, 130 N. Y. Supp. 182, 72 Misc. Rep. 400; Columbia Distilling Co. v. Rech (1912), 151 A. D. 128, 135 N. Y. Supp. 206; Levy v. Arons, 142 N. Y. Supp. 312, 81 Misc. 165.

*North Dakota*.—Merchants Nat. Bank of Wimbledon v. Bastrup (1918), 168 N. W. 42; Eaton v. Delay, 32 N. D. 328, 155 N. W. 644, L. R. A. 1916D, 528; Sawyer State Bank v. Sutherland, 36 N. D. 493, 162 N. W. 696.

*Ohio*.—Hoffman v. Wiedeman Brewing Co. (1910), 31 Ohio C. C. 609.

*Oklahoma*.—Conqueror Trust Co. v. Simmon (1917), 162 Pac. 1098.

*Oregon*.—Palomcki v. Laurell (1917), 168 Pac. 935.

*Pennsylvania*.—Swank v. Kaufman, 255 Pa. 316, 99 Atl. 1000, L. R. A. 1917D, 826.

*Rhode Island*.—Abram v. Greer (1913), 88 Atl. 884.

*Tennessee*.—Moss v. Maddux (1902), 108 Tenn. 405; Holman v. Higgins, 134 Tenn. 387, 183 S. W. 1008, L. R. A. 1916F, 1263.

*Texas*.—Spencer v. Triplett (1916), 184 S. W. 712.

*Utah*.—Farmers & Stock Growers' Bank v. Palivant Valley Land Co. (1917), 165 Pac. 462.

*Virginia*.—Hoffman v. Planter's Nat. Bank (1901), 99 Va. 480, 39 S. E. 134; Nottingham v. Ackiss, 107 Va. 63, 57 S. E. 592, 67 S. E. 351.

*Washington*.—Lombardo v. Lombardini (1910), 57 Wash. 352, 106 Pac. 907, 32 L. R. A. (N. S.) 515; Pitt v. Little (1910), 58 Wash. 355, 108 Pac. 941; Handsaker v. Pedersen (1912), 71 Wash. 218, 128 Pac. 230; Washington Finance Corporation v. Glass (1913), 134 Pac. 480; Gould v. Gould (1917), 169 Pac. 324.

*Wisconsin*.—Lawless v. State (1902), 114 Wis. 189, 89 N. W. 891.

*United States*.—Melton v. Pensacola Bank, 190 Fed. Rep. 126, 111 C. A. 166; Pensacola State Bank v. Melton (1913), 210 Fed. 57.

## ARTICLE IX.

### BILLS OF EXCHANGE—FORM AND INTERPRETATION.

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| <p>§ 126. Bill of exchange defined.<br/>127. Bill not an assignment of funds in hands of drawee.<br/>128. Bill addressed to more than one drawee.</p> | <p>§ 129. Inland and foreign bills of exchange.<br/>130. When bill may be treated as promissory note.<br/>131. Drawee in case of need.</p> |
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Sections 126 to 131 above are the sections used by the commissioners.

See table of corresponding sections of the Law in the various states and territories beginning on page 360.

**§ 126. Bill of exchange defined.** A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.<sup>1</sup> 1a

See text, § 39.

Corresponding provision of the English Bills of Exchange Act: Secs. 3 (1), (2), 8 (4)—Bills of Exchange Act: 3 (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Contractor's order on owner not payable to "order or bearer" as negotiable paper. *Simpson v. E. C. Payne Lumber Co.*, — Ala. —, 82 So. 649.

Bill of exchange as term of pleading. *Knox v. Rivers Bros.*, — Ala. App. —, 88 So. 33.

An order drawn upon no one in particular is too indefinite. *Dugane v. Hvezda Pokroku No. 4* (Iowa), 119 N. W. 141.

Contractor's order to owner of building to pay from amount finally due a certain sum is not a bill of exchange. *Buttrick Lumber Co. v. Collins*, 202 Mass. 413, 89 N. E. 138.

Voucher draft becomes negotiable when receipted in the manner provided therein. *Van Blatz Brewing Co. v. Interstate Ice Co.*, 161 Mo. App. 531, 143 S. W. 542.

Bill designating on its face that it is to be paid from special funds when they come into existence is not negotiable. *Tisdale Lumber Co. v. Piquet*, 153 App. Div. 266, 137 N. Y. Supp. 1021.

Defendant's giving a bill of exchange knowing that same will not be paid is not an equitable assignment of defendant's rights. *American Luxfer Prism Co. v. Bartolicus Star Iron Works*, 152 N. Y. Supp. 1014.

Bill of exchange is valid even though not dated. *Lewis Hubbard Co. v. Morton*, 80 W. Va. 137, 92 S. E. 252.

Orders authorizing the deduction of one dollar per month from monthly pay to be paid to physician are bills binding on drawee after acceptance. *Skeets v. Coast Coal Co.*, 74 Wash. 327, 133 Pac. 433.

A time check as a negotiable instrument. *National Market Co. v. Maryland Casualty Co.*, — Wash. —, 179 Pac. 479.

Telegraph transfer draft as a commercial instrument. *Postal Telegraph-Cable Co. v. Citizens' Nat. Bank*, 228 Fed. Rep. 601, 143 C. C. A. 123.

Acceptor of bill of exchange struck out the words "or order," but under English statute this did not affect it so as to render alteration material. *Meyer v. Decroix* (1891), A. C. 520.

Instrument in form of bill of exchange not bearing a drawer's signature is not a bill of exchange. *Lawson's Executors v. Watson* (1907), Session Cases 1353.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Knox v. Rivers Bros.*, 88 So. 33; *Simpson v. E. C. Payne Lumber Co.*, 82 So. 649.

*Colorado*.—*Van Buskirk v. State Bk. of Rocky Ford* (1905), 35 Colo. 142, 83 Pac. 778, 117 Am. St. 182.

*Connecticut*.—*Windsor Cement Co. v. Thompson* (1913), 86 Atl. 1.

*Delaware*.—*Lawson v. Layton & Layton* (1913), 86 Atl. 105.

*Iowa*.—*Dugane v. Hvezda Pokroku No. 4* (1909), 119 N. W. 141.

*Massachusetts*.—*Buttrick Lumber Co. v. Collins* (1909), 202 Mass. 413, 89 N. E. 138.

*Mississippi*.—*Country Shiloh & Savannah Turnpike Co. v. Goch* (1917), 113 Miss. 50, 73 So. 869.

*Missouri*.—*Val Blatz Brewing Co. v. Interstate Ice & C.* (1912), 143 S. W. 542.

*New York*.—*Amsinck v. Rogers* (1907), 189 N. Y. 252, 82 N. E. 134 12 L. R. A. (N. S.) 875, 121 Am. St. 858.

*North Carolina*.—*Johnson v. Lasseter* (1911), 155 N. Car. 47.

*New Mexico*.—*Clayton Town Site Co. v. Clayton Drug Co.* (1915), 147 Pac. 460.

*New York*.—*Tisdale Lumber Co. v. Piquet* (1912), 137 N. Y. Supp. 1021.

*Oregon*.—*U. S. Nat. Bk. v. First Trust & Sav. Bk.* (1911), 60 Ore. 266, 119 Pac. 343.

*Tennessee*.—First Nat. Bk. of Murfreesboro v. First Nat. Bk. of Nashville (1913), 154 S. W. 965.

*Washington*.—Frederick & Nelson v. Spokane Grain Co. (1907), 47 Wash. 85, 91 Pac. 570; The State v. Garland (1908), 65 Wash. 666; Skeets v. Coast Coal Co. (1913), 133 Pac. 433; Plaza Farmer's Union Warehouse & Elevator Co. v. Ryan (1914), 138 Pac. 651; National Market Co. v. Maryland Casualty Co. (1918), 179 Pac. 479.

*West Virginia*.—Lewis Hubbard & Co. v. Morton (1917), 92 S. E. 252.

*Wisconsin*.—Westberg v. Chicago Lumber Co. (1903), 117 Wis. 589, 94 N. W. 572; Columbian Banking Co. v. Bowen (1908), 134 Wis. 218, 114 N. W. 451.

*Wyoming*.—Brown v. Cow Creek Co. (1912), 126 Pac. 886.

*United States*.—United States v. Chase Nat. Bk. (1917), 241 Fed. 535.

**§ 127. Bill not an assignment of funds in hands of drawee.** A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof and the drawee is not liable on the bill unless and until he accepts the same.<sup>1, 1a</sup>

See text, § 72.

Cross sections: See section 325 as to checks.

Corresponding provision of the English Bills of Exchange Act: Sec. 53 (1), (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Bill of itself not an assignment of funds. Iowa State Sav. Bank of Fairfield v. City Nat. Bank of Tipton, — Iowa —, 168 N. W. 148.

An unaccepted draft is not an assignment of drawer's funds. Jones v. Crumpler, 119 Va. 143, 89 S. E. 232.

An order to pay X at end of each month moneys due from certain source is not an equitable assignment. Frederick & Nelson v. Spokane Grain Co., 47 Wash. 85, 91 Pac. 570.

Giving a check for a sum larger than his deposit is an intended assignment of deposit. British Linen Co. Bank v. Carruthers, 10 Sess. Cas. 923.

Presentation of an accepted bill payable at bank operates as an intended assignment of acceptor's funds. British Linen Co. v. Rainey, 12 Sess. Cas. 825.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Delaware*.—Lawson v. Layton & Layton (1913), 86 Atl. 105.

*Florida*.—Fulton v. Gesteding (1904), 47 Fla. 150, 36 So. 56.

*Iowa.*—*Iowa State Sav. Bank of Fairfield v. City Nat. Bank of Tipton*, 168 N. W. 148.

*Kansas.*—*Rambo v. The First State Bk. of Argentine* (1912), 88 Kans. 257.

*Oregon.*—*U. S. Nat. Bk. v. First Trust & Sav. Bk.* (1911), 60 Oreg. 266, 119 Pac. 543.

*Tennessee.*—*First Nat. Bk. of Murfreesboro v. First Nat. Bk. of Nashville* (1913), 154 S. W. 965.

*Virginia.*—*B. & O. R. R. Co. v. First Nat. Bk.* (1904), 47 S. E. 837.

*Washington.*—*Wadhams v. Portland V. & Y. R. Co.* (1905), 37 Wash. 86, 79 Pac. 597; *Frederick & Nelson v. Spokane Grain Co.* (1907), 47 Wash. 85, 91 Pac. 570; *Nelson v. Nelson Bennett Co.* (1903), 31 Wash. 116, 71 Pac. 749; *Skeets v. Coats Coal Co.* (1913), 133 Pac. 433; *Plaza Farmer's Union Warehouse & Elevator Co. v. Ryan* (1914), 138 Pac. 651.

§ 128. Bill addressed to more than one drawee. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.<sup>1, 1a</sup>

See text, § 52.

The words, "or in succession," are not included in the Wisconsin act.

Corresponding provision of English Bills of Exchange Act: Sec. 6 (2).

§ 129. Inland and foreign bills of exchange. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.<sup>1, 1a</sup>

See text, § 39.

Corresponding provision of the English Bills of Exchange Act: Sec. 4 (1), (2).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Illinois.*—*Sublette Ex. Bk. v. Fitzgerald* (1912), 168 Ill. App. 240.

*Indiana.*—*Bingham v. New Town Bk.* (1918), 118 N. E. 318.

*Massachusetts.*—*Buttrick Lumber Co. v. Collins* (1909), 202 Mass. 413, 89 N. E. 138.

*Missouri.*—*Bk. of Laddonia v. Bright-Coy Comm. Co.* (1909), 120 S. W. 648.

*New York*.—Amsinck v. Rogers (1907), 189 N. Y. 252, 82 N. E. 134, 12 L. R. A. (N. S.) 875, 121 Am. St. 858; Graham v. York (1910), 140 A. D. 639.

**§ 130. When bill may be treated as promissory note.** Where in a bill the drawer and drawee are the same person or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.<sup>1 1a</sup>

See text, § 52.

The Wisconsin act omits "or a person."

Corresponding provision of the English Bills of Exchange Act: Sec. 5 (2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Agent's draft upon principal by the latter's authority need not be accepted by drawee. *First Nat. Bank v. Home Ins. Co.*, 16 N. M. 66, 113 Pac. 815.

Draft by agent upon principal at latter's direction may be treated as promissory note. *C. M. Keyes Commission Co. v. Miller (Okla.)*, 157 Pac. 1029.

Draft may be treated as either bill or note by holder. *Alex Woldert Co. v. Citizens Bank of Ft. Valley, Ga.*, — Tex. Civ. App. —, 234 S. W. 124.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*New Mexico*.—*First Nat. Bk. of Artesia v. Home Ins. Co. of N. Y.* (1911), 16 N. Mex. 66, 113 Pac. 815.

*New York*.—*Graham v. York* (1910), 140 A. D. 639; *Pavenstedt v. N. Y. Life Ins. Co.* (1911), 203 N. Y. 91.

*Pennsylvania*.—*Hannon v. Allegheny Bellevue Land Co.* (1910), 44 Pa. Super. Ct. 266.

*Washington*.—*Clemens v. E. H. Stanton Co.* (1911), 61 Wash. 419, 112 Pac. 494.

**§ 131. Referee in case of need.** The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.<sup>1 1a</sup>

See text, §§ 155, 52.

Corresponding provision of the English Bills of Exchange Act:  
Sec. 15.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Presentment within reasonable time of demand note. *American Trust Co. v. Manley*, 187 N. Y. Supp. 895.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*New York*.—*American Trust Co. v. Manley*, 187 N. Y. Supp. 895.

*Texas*.—*Alex Woldert Co. v. Citizens Bank of Fort Valley, Ga.* (Tex. Civ. App.), 234 S. W. 124.



## ARTICLE X.

### ACCEPTANCE OF BILLS OF EXCHANGE.

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|---|--|
| <p>§ 132. Acceptance, how made, etc.</p> <p>133. Holder entitled to acceptance on face of bill.</p> <p>134. Acceptance by separate instrument.</p> <p>135. Promise to accept; when equivalent to acceptance.</p> <p>136. Time allowed drawee to accept.</p> | <p>§ 137. Liability of drawee retaining or destroying bill.</p> <p>138. Acceptance of incomplete bill.</p> <p>139. Kinds of acceptance.</p> <p>140. What constitutes a general acceptance.</p> <p>141. Qualified acceptance.</p> <p>142. Rights of parties as to qualified acceptance.</p> |
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Sections 132 to 142 above are the sections used by the commissioners.

See table of corresponding sections of the law in the various states and territories beginning on page 360.

§ 132. **Acceptance; how made, et cetera.** The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.<sup>1</sup> 1a

See text, §§ 71, 73.

Cross sections: Sec. 191.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Complaint need not allege a written acceptance. *Faircloth-Byrd Mercantile Co. v. Adkinson*, 167 Ala. 344, 52 So. 419.

Entry of check in passbook not an acceptance where passbook has notice that checks are entered conditionally. *National Produce Bank of Chicago v. Dodds*, 205 Ill. App. 444.

Acceptance in writing. *Iowa State Sav. Bank of Fairfield v. City Nat. Bank of Tipton*, — Iowa —, 168 N. W. 148.

Bank not liable on an uncertified or unaccepted check even if cashier did say check was good. *Rambo v. First Nat. Bank*, 88 Kan. 257, 128 Pac. 182.

Drawee not bound by oral acceptance. *Ewing v. Citizens' Nat. Bank*, 162 Ky. 551.

Acceptance by telegram. *Commercial Bank of Woodville, Miss., v. First Nat. Bank*, — La. —, 86 So. 342.

Foreign bill payable in another state not controlled by this section. *Bank of Laddonia v. Bright-Coy Commission Co.*, 139 Mo. App. 110, 120 S. W. 648.

Telegram stating sufficiency of funds to pay is not acceptance. *Carmichael v. Tishomingo Banking Co.* (Mo. App.), 191 S. W. 1043.

Implied acceptance from acts showing intention to comply with drawer's intention. *Southern Creosoting Co. v. Chicago & A. R. Co.*, — Mo. —, 205 S. W. 716.

Payee who telephones bank before receiving check and was informed check was good entitled to recover from bank. *Gruenther v. Bank of Monroe*, 90 Neb. 280, 133 N. W. 402.

The stamping of a bill of exchange with word "paid" is not an acceptance. *Hanna v. McCrory*, 19 N. M. 183, 141 Pac. 996.

Oral acceptance not binding. *Clayton Town Site Co. v. Clayton Drug Co.*, 20 N. M. 185, 147 Pac. 460.

Unaccepted order is not equitable assignment unless drawn on a particular fund. *Izzo v. Ludington*, 79 App. Div. 272, 79 N. Y. Supp. 744.

Constructive acceptances not affected by this section. *Wisner v. First Nat. Bank*, 220 Pa. 21, 68 Atl. 955, 17 L. R. A. (N. S.) 1266.

Acceptance of draft must be in writing. *First Nat. Bank v. Sanford*, — Tex. Civ. App. —, 228 S. W. 650.

Oral acceptance of bill of exchange not binding on drawee. *Nelson v. Nelson-Bennett Co.*, 31 Wash. 116, 71 Pac. 749.

Complaint must allege a written acceptance in suit against drawee. *Wadhams v. Portland Ry. Co.*, 37 Wash. 86, 79 Pac. 597.

Drawee's note on bill of exchange admitting amount but returning bill is not an acceptance. *Plaza Farmers' Union v. Ryan*, 78 Wash. 124, 138 Pac. 651.

Plea is one of a written agreement unless affirmatively showing one in parol. *Barnsdall v. Waltemeyer*, 142 Fed. Rep. 415, 73 C. C. A. 515.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—Faircloth-Byrd Mercantile Co. v. Adkinson, 167 Ala. 344, 52 So. 419.

*Colorado*.—Van Buskirk v. State Bk. of Rocky Ford (1905), 35 Colo. 142, 83 Pac. 778, 177 Am. St. 182.

*Illinois*.—Dumbeck v. Walsh (1913), 179 Ill. App. 239; National Produce Bank of Chicago v. Dodds, 205 Ill. App. 444.

*Iowa*.—Dugane v. Hvezda Pokroku No. 4 (1909), 119 N. W. 141; Wells v. Western Un. Tel. Co. (1910), 123 N. W. 371; Iowa State Sav. Bank of Fairfield v. City Nat. Bank of Tipton, 168 N. W. 148.

*Kansas*.—Rambo v. The First State Bk. of Argentine (1912), 88 Kans. 257, 128 Pac. 182.

*Kentucky*.—Ewing v. Cit. Nat. Bk. (1915), 162 Ky. 551, 172 S. W. 955; Selma Sav. Bk. v. Webster County Bk. (1919), 206 S. W. 870.

*Louisiana*.—Commercial Bank of Woodville, Miss., v. First Nat. Bank, 86 So. 342.

*Mississippi*.—County Shiloh & Savannah Turnpike Co. v. Goch (1917), 113 Miss. 50, 73 So. 869.

*Missouri*.—Bank of Laddonia v. Bright-Coy Commission Co., 139 Mo. App. 110, 120 S. W. 648; Lehnhard v. Sedway (1911), 160 Mo. App. 83, 141 S. W. 430; Carmichael v. Tishomingo Banking Co. (1917) (Mo. App.), 191 S. W. 1043; Southern Creosoting Co. v. Chicago & A. R. Co. (1918), 205 S. W. 716.

*Nebraska*.—State Bk. of Beaver Co. v. Bradstreet (1911), 89 Neb. 186, 130 N. W. 1038; Gruenther v. Bank of Monroe (1911), 90 Neb. 280, 133 N. W. 402.

*New Mexico*.—Clayton Town Site Co. v. Clayton Drug Co. (1915), 20 N. M. 185, 147 Pac. 460; Hanna v. McCrory, 19 N. M. 183, 141 Pac. 996.

*New York*.—Izzo v. Ludington (1903), 79 A. D. 272, 79 N. Y. Supp. 744; Nat. Citizens Bk. v. Toplitz (1903), 81 A. D. 593, 81 N. Y. Supp. 422; Colcord v. Banco de Tamanlipas (1918), 168 N. Y. Supp. 710.

*Oklahoma*.—Ballen & Friedman v. Bk. of Krenlin (1913), 130 Pac. 539; First Nat. Bk. of Tulsa v. Muskorgree Pipe Line Co. (1914), 139 Pac. 1136.

*Oregon*.—First Nat. Bk. of Cottage Grove v. Bk. of Cottage Grove (1911), 59 Oreg. 388, 117 Pac. 293; U. S. Nat. Bk. v. First Trust & Savings Bk., 60 Oreg. 266, 119 Pac. 343.

*Pennsylvania*.—Clarke & Co. v. Warren Sav. Bk. (1906), 31 Pa. Super. Ct. 647; Wisner v. First Nat. Bk. of Gallitzin (1908), 220 Pa. 21, 68 Atl. 955, 17 L. R. A. (N. S.) 1266; Croyle v. Guelich (1908), 35 Pa. Super. Ct. 356; Colonial Tr. Co. v. Nat. Bk. of Western Pa. (1912), 50 Pa. Super. Ct. 510.

*South Dakota*.—First Nat. Bk. of Pukwana v. Brule Nat. Bk. of Chamberlain (1917), 161 N. W. 616.

*Tennessee*.—Watanga Co. Bk. v. McQueen (1914), 170 S. W. 1025; First Nat. Bank of Murfreesboro v. First Nat. Bank of Nashville, 154 S. W. 965; Ahrens & Ott Co. v. Moore & Sons (1915), 174 S. W. 270; First Nat. Bk. v. Sanford, 228 S. W. 650.

*Washington*.—Nelson v. Nelson Bennett Co. (1903), 31 Wash. 116, 71 Pac. 749; Wadhams v. Portland V. & Y. R. Co. (1905), 37 Wash. 86, 79 Pac. 597; Seattle Shoe Co. v. Packard (1906), 43 Wash. 527, 86 Pac. 845, 117 Am. St. 1064; Skeets v. Coast Coal Co. (1913), 74 Wash. 327, 133 Pac. 433; Plaza Farmer's Union Warehouse & Elevator Co. v. Ryan (1914), 78 Wash. 124, 138 Pac. 651.

*Virginia*.—B. & O. R. R. Co. v. First Nat. Bk. (1904), 102 Va. 753, 47 S. E. 837.

*United States*.—Barnsdall v. Waltemeyer, 142 Fed. Rep. 415, 20 N. M. 185, 147 Pac. 460; First Nat. Bk. of Dunn, N. C., v. First Nat. Bk. of Massillon, Ohio (1913), 210 Fed. 542; John A. Schmitt's Sons v. Shadrach (1918), 251 Fed. 874.

**§ 133. Holder entitled to acceptance on face of bill.** The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored.<sup>1, 1a</sup>

See text, § 73.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Bill payable at fixed time may be presented for acceptance at any time. *National Park Bank v. Saitta*, 127 App. Div. 624, 111 N. Y. Supp. 927.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Nebraska*.—*Swenson Co. v. Commercial State Bk.* (1915), 154 N. W. 233.

*New York*.—*Nat. Park Bk. v. Saitta* (1908), 127 A. D. 624, 111 N. Y. Supp. 927.

*Oklahoma*.—*First Nat. Bk. of Tulsa v. Muskogee Pipe Line Co.* (1914), 139 Pac. 1136.

**§ 134. Acceptance by separate instrument.** Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.<sup>1, 1a</sup>

See text, § 82.

In Illinois and South Dakota the following words, "to whom it is shown and," are omitted.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Acceptance on paper other than bill. *Iowa State Sav. Bank of Fairfield v. City Nat. Bank of Tipton*, — Iowa —, 168 N. W. 148.

Letter as accommodation acceptance stating that acceptor was not to pay the draft was not acceptance. *Lehnhard v. Sedway*, 160 Mo. App. 83, 141 S. W. 430.

Defendant answered plaintiff's wire "Will pay M's draft on me, two-fifty for horses," and was liable thereon. *State Bank v. Bradstreet*, 89 Neb. 186, 130 N. W. 1038, 38 L. R. A. 747.

President has no authority to bind bank on past-dated checks. *Swenson Bros. v. Commercial State Bank*, 98 Neb. 702, 154 N. W. 233.

Bank's telegram that draft "is good" is not acceptance. *Colcord v. Banco der Tamaulipes*, 181 App. Div. 295, 168 N. Y. Supp. 710.

Drawee's letter of acceptance of draft is not valid as to anyone who did not see it. *Jones v. Clumpler*, 119 Va. 143, 89 S. E. 232.

Before taking checks payee telegraphed bank to see if checks would be paid. Bank replied "checks will undoubtedly be taken care of" and was held to have accepted them. *First Nat. Bk. of Dunn v. First Nat. Bk. of Massillon*, 210 Fed. 542.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Arkansas*.—*First Nat. Bk. of Tulsa v. Muskogee Pipe Line Co.* (1914), 139 Pac. 1136.

*Iowa*.—*Wells v. Western Un. Tel. Co.* (1910), 123 N. W. 371; *Iowa State Sav. Bank of Fairfield v. City Nat. Bank of Tipton*, 168 N. W. 148.

*Kentucky*.—*Selma Sav. Bk. v. Webster County Bk.* (1919), 206 S. W. 870.

*Missouri*.—*Lehnhard v. Sedway* (1911), 160 Mo. App. 83, 141 S. W. 430.

*Nebraska*.—*State Bk. of Beaver Co. v. Bradstreet* (1911), 89 Neb. 186, 130 N. W. 1038, 38 L. R. A. 747; *Swenson Bros. v. Commercial State Bank*, 98 Neb. 702, 154 N. W. 233.

*New York*.—*Colcord v. Banco der Tamaulipes*, 168 N. Y. Supp. 710, 181 A. D. 295.

*Oklahoma*.—*First Nat. Bk. v. Muskogee Pipe Line Co.* (1914), 139 Pac. 1136.

*Virginia*.—*James v. Clumpler* (1916), 119 Va. 143, 89 S. E. 232.

*United States*.—*Barnsdall v. Waltemayer* (1905), 142 Fed. 415, 73 C. A. 515; *First Nat. Bk. of Dunn, N. C. v. First Nat. Bk. of Massillon, Ohio* (1913), 210 Fed. 542.

**§ 135. Promise to accept; when equivalent to acceptance.** An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.<sup>1</sup> <sup>1a</sup>

See text, § 82.

The Illinois Act inserts the words "or after" following the word "before."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Telegraphic communication as to future acceptance of certain sum on a certain signature. *Iowa State Sav. Bank of Fairfield v. City Nat. Bank of Tipton*, — *Iowa* —, 168 N. W. 148.

Defendants not liable on orders because of oral promise to pay them. *Nagle v. Richards*, 134 App. Div. 25, 118 N. Y. Supp. 53.

Collateral written promise to accept bill upon condition is not acceptance. *Muller v. Kling*, 149 App. Div. 176, 133 N. Y. Supp. 614, 209 N. Y. 239, 108 N. E. 138.

Letter suggesting that agent draw on principal occasionally is not acceptance *Bank of Morgantown v. Hay*, 143 N. C. 326, 55 S. E. 811.

Telegraphed authority to draw on defendant which was attached to draft and induced bank to cash draft was acceptance. *First Nat. Bank of Tulsa v. Muskogee Pine Line Co.*, 40 Okla. 603, 139 Pac. 1136, L. R. A. 1916B, 1021.

Acceptance must be in writing. *First Nat. Bank v. Sanford*, — Tex. Civ. App. —, 228 S. W. 650.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Iowa*.—*Wells v. Western Union Tel. Co.* (1910), 123 N. W. 371; *Iowa State Bk. of Fairfield v. City Nat. Bk. of Tipton* (1918), 168 N. W. 148.

*Missouri*.—*Ensign v. Clark Bros. Co.* (1917), 193 S. W. 961.

*New York*.—*Nagle v. Richards* (1909), 134 A. D. 25, 118 N. Y. Supp. 53; *Muller v. Kling* (1912), 133 N. Y. Supp. 614, 149 A. D. 176, 239 N. Y. 239, 108 N. E. 138; *Lemon Importing Co. v. Garfield Sav. Bk.* (1919), 173 N. Y. Supp. 55.

*North Carolina*.—*Bk. of Morgantown v. Hay* (1906), 143 N. Car. 326, 55 S. E. 811.

*Oklahoma*.—*First Nat. Bank of Tulsa v. Muskogee Pipe Line Co.*, 40 Okla. 603, 139 Pac. 1136, L. R. A. 1916B, 1021.

*Texas*.—*First Nat. Bank v. Sanford*, 228 S. W. 650.

*United States*.—*Barnsdall v. Waltemayer* (1905), 142 Fed. 415, 73 C. C. A. 515.

§ 136. Time allowed drawee to accept. The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation.<sup>1, 1a</sup>

See text, § 90.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Bank stamped a note paid and rendered itself liable thereon. *Nineteenth Ward Bank v. First Nat. Bank*, 184 Mass. 49, 67 N. E. 670.

Drawee bank after marking check paid charging depositor's account and crediting the account of the holder cannot change its entries and cancel the paid mark on check. *Consolidated Nat. Bank v. First Nat. Bank*, 129 N. Y. App. Div. 538, 114 N. Y. Supp. 308, affirmed 199 N. Y. 516.

Mingling checks and drafts with bank property and forwarding check for amount makes bank owner of checks and drafts sent for collection. *German Nat. Bank v. Carnegie Trust Co.*, 172 App. Div. 158, 158 N. Y. Supp. 222.

Charging drawer's account with a check is a payment and entitles payee to the amount. *First Nat. Bank v. Nat. Park Bank*, 110 Misc. Rep. 31, 165 N. Y. Supp. 15.

Where drawee bank merely stamped check paid and neither made delivery or gave notification it did not make acceptance. *First Nat. Bank of Murfreesboro v. First Nat. Bank of Nashville*, 127 Tenn. 205, 154 S. W. 965.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Massachusetts*.—*Nineteenth Ward Bank v. First Nat. Bank*, 184 Mass. 49, 67 N. E. 670.

*New York*.—*Consolidated Nat. Bank v. First Nat. Bank*, 129 N. Y. App. Div. 538, 114 N. Y. Supp. 308, affirmed 199 N. Y. 516; *First Nat. Bank v. Nat. Park Bank*, 165 N. Y. Supp. 15, 110 Misc. Rep. 31; *German Nat Bank v. Carnegie Trust Co.*, 158 N. Y. Supp. 222, 172 App. Div. 158.

*Tennessee*.—*First Nat. Bk. of Murfreesboro v. First Nat. Bk. of Nashville* (1913), 127 Tenn. 205, 154 S. W. 965.

§ 137. Liability of drawee retaining or destroying bill. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.<sup>1 1a</sup>

See text, § 85.

Illinois and South Dakota omit this section.

In Pennsylvania the following proviso has been added: "Provided, that the mere retention of such bill by the drawer, unless its return has been demanded, will not amount to an acceptance; and provided further that this section shall not apply to checks."

The Wisconsin act adds: "Mere retention of the bill is not acceptance."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Retention as acceptance. *St. Louis & S. W. Ry. Co. v. James*, 78 Ark. 490, 95 S. W. 804.

Accidental destruction not acceptance, but question of purpose of destruction for jury. *Bailey & Co. v. S. W. Veneer Co.*, 126 Ark. 257, 190 S. W. 430.

Bank liable as acceptor where it paid the check upon forged indorsement of payee's name. *Chamberlain Metal, Etc., Co. v. Bank of Pleasanton*, 98 Kan. 611, 160 Pac. 1138.

Retention not acceptance. *Dickinson v. Marsh*, 57 Mo. App. 566.

Mere retention not acceptance. *Matteson v. Moulton*, 79 N. Y. 627.

Failure to return bill as acceptance. *Standard Trust Co. v. Commercial Nat. Bank*, 166 N. C. 112, 81 S. E. 1074.

Delivery of check by bank to notary public does not relieve drawee from liability. *Provident S. & B. Co. v. First Nat. Bank*, 37 Pa. Super. Ct. 17.

Failure to return bill within 24 hours is acceptance. *Wisner v. First Nat. Bank*, 220 Pa. 21, 68 Atl. 955, 17 L. R. A. (N. S.) 1266.

Payment by drawee bank is not acceptance. *Union Nat. Bank v. Franklin Nat. Bank*, 249 Pa. 375, 94 Atl. 1080.

Presentment for payment or acceptance not distinguished. *People's Nat. Bank v. Swift*, 134 Tenn. 175, 183 S. W. 725.

Mere retention of bill is not acceptance without destruction or refusal to return. *Westberg v. Chicago Lumber Co.*, 117 Wis. 589, 94 N. W. 572.

Presentment for payment is not delivery for acceptance within this section. *First Nat. Bank of Omaha v. Whitmore*, 177 Fed. Rep. 397, 101 C. C. A. 401.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Arkansas*.—*Bailey & Co. v. Southwestern Veneer Co.* (1919), 126 Ark. 257, 190 S. W. 430; *St. Louis & S. W. Ry. Co. v. James*, 78 Ark. 490, 95 S. W. 804.

*Kansas*.—*Chamberlain Metal, Etc., Co. v. Bank of Pleasanton*, 98 Kan. 611, 160 Pac. 1138.

*Missouri*.—*Dickinson v. Marsh*, 57 Mo. App. 566.

*New York*.—*Matteson v. Moulton*, 79 N. Y. 627; *State Bk. v. Weiss* (1904), 46 Misc. 93, 91 N. Y. Supp. 276; *Foley v. N. Y. Sav. Bk.* (1913), 139 N. Y. Supp. 915.

*North Carolina*.—*Standard Trust Co. v. Commercial Nat. Bank*, 166 N. Car. 112, 81 S. E. 1074.

*Pennsylvania*.—*Wisner v. First Nat. Bk. of Gallitzin* (1908), 220 Pa. 21, 68 Atl. 955, 17 L. R. A. (N. S.) 1266; *Provident Securities & Banking Co. v. First Nat. Bk. of Gallitzin* (1908), 37 Pa. Super. Ct. 17; *Union Nat. Bank v. Franklin Nat. Bank*, 249 Pa. 375, 94 Atl. 1080.

*Tennessee*.—*People's Nat. Bk. v. Swift*, 134 Tenn. 175, 183 S. W. 725.

*Wisconsin*.—*Westberg v. Chicago Lumber Co.* (1903), 117 Wis. 589, 94 N. W. 572.

*United States*.—*First Nat. Bk. of Omaha v. Whitmore* (1910), 177 Fed. Rep. 397, 101 C. C. A. 401.

§ 138. Acceptance of incomplete bill. A bill may be accepted before it has been signed by the drawer, or while other-



wise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.<sup>1</sup> <sup>1a</sup>

See text, § 77.

Cross sections: See Sec. 14.

In South Dakota there is probably a clerical error by inserting the word "payable" between the word "bill" and the word "accepted."

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Acceptance before name of drawer is filled in. *Stafford v. Hill*, — Cal. App. —, 200 Pac. 33.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*California*.—*Stafford v. Hill* (Cal. App.), 200 Pac. 33.

**§ 139. Kinds of acceptance.** An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

See text, §§ 78, 79.

**§ 140. What constitutes a general acceptance.** An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

See text, § 79.

**§ 141. Qualified acceptance.** An acceptance is qualified, which is:

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated:

2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

3. Local, that is to say, an acceptance to pay only at a particular place;

4. Qualified as to time;

5. The acceptance of some one or more of the drawees, but not of all.<sup>1</sup> <sup>1a</sup>

See text, § 80.

Cross section: See Sec. 140.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Acceptance depending on happening of a certain condition is conditional. *Milwaukee Corrugating Co. v. Traylor*, 95 Kan. 562, 148 Pac. 653.

Acceptance is conditional when dependent on fulfillment of conditions therein stated. *Crane Co. v. Druid Realty Co.*, — Md. —, 112 Atl. 621.

Telegram, "Will honor your draft, telegram attached," is unconditional acceptance although another telegram intended to be attached. *Ensign v. Clark Cutlery Co.*, 195 Mo. App. 584, 193 S. W. 961.

"Will pay M's draft on me for two-fifty for horses" is unconditional acceptance. *State Bank of Beaver Co. v. Bradstreet*, 89 Neb. 186, 130 N. W. 1038, 38 L. R. A. (N. S.) 747.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Kansas*.—*Milwaukee, Carrington Co. v. Taylor* (1915), 148 Pac. 653.

*Maryland*.—*Crane Co. v. Druid Realty Co.*, 112 Atl. 621.

*Nebraska*.—*State Bank of Beaver Co. v. Bradstreet*, 89 Neb. 186, 130 N. W. 1038, 38 L. R. A. (N. S.) 747.

§ 142. Rights of parties as to qualified acceptance. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.<sup>1</sup> <sup>1a</sup>

See text, §§ 121, 75.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Payee taking conditional acceptance without notice thereof to drawer discharged the latter. *Lewis Hubbard & Co. v. Morton*, 80 W. Va. 137, 92 S. E. 252.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*West Virginia*.—*Lewis Hubbard & Co. v. Morton* (1917), 92 S. E. 252.

## ARTICLE XI.

### PRESENTMENT OF BILLS OF EXCHANGE FOR ACCEPTANCE.

- |   |   |
|---|---|
| <p>§ 143. When presentment for acceptance must be made.</p> <p>144. When failure to present releases drawer and indorser.</p> <p>145. Presentment; how made.</p> <p>146. On what days presentment may be made.</p> <p>§ 147. Presentment; where time is insufficient.</p> | <p>148. When presentment is excused.</p> <p>149. When dishonored by non-acceptance.</p> <p>150. Duty of holder where bill not accepted.</p> <p>151. Rights of holder where bill not accepted.</p> |
|---|---|

Sections 143 to 151 above are the sections used by the commissioners.

See table of corresponding sections of the Law in the various states and territories beginning on page 360.

**§ 143. When presentment for acceptance must be made.**  
Presentment for acceptance must be made;

1. Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or,

2. Where the bill expressly stipulates that it shall be presented for acceptance; or,

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.<sup>1a</sup>

See text, §§ 151, 88.

Cross section: 147.

Corresponding provision of the English Bills of Exchange Act; Sec. 39 (2) (3).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama.*—Hall v. First Bk. of Crosville (1916), 72 So. 171

*Colorado*.—*Van Buskirk v. State Bk. of Rocky Ford* (1905), 35 Colo. 142, 83 Pac. 778, 117 Am. St. 182.

*Illinois*.—*Simonoff v. Granite City Nat. Bk.* (1917), 116 N. E. 636.

*New York*.—*Gordon v. Benquist* (1916), 159 N. Y. Supp. 1; *Champion Shoe Machine Co. v. Landin* (1917), 162 N. Y. Supp. 346.

*United States*.—*First Nat. Bk. of Omaha v. Whitmore* (1910). 177 Fed. Rep. 397, 101 C. C. A. 401.

§ 144. When failure to present releases drawer and indorser. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.<sup>1a</sup>

See text, § 153.

Cross section: 193.

Corresponding provision of the English Bills of Exchange Act: Sec. 40 (1).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Illinois*.—*Simonoff v. Granite City Nat. Bk.* (1917), 116 N. E. 636.

*Kentucky*.—*Ewing v. Ckt. Nat. Bk.* (1915), 172 S. W. 955.

§ 145. Presentment; how made. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

2. Where the drawee is dead, presentment may be made to his personal representative;

3. Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustees or assignee.

See text, §§ 89, 90.

Cross sections: 141, Subd. 5; 148, Subd. 1.

Corresponding provision of the English Bills of Exchange Act: Sec. 41 (1) (a), 41 (1) (b), 41 (1) (c), 41 (1) (d).

Erroneous engrossing omitted the word "his" before the word "behalf" in New York Act.

**§ 146. On what days presentment may be made.** A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 132 and 145 of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon on that day.<sup>1</sup> <sup>1a</sup>

See text, § 153.

Arizona statute omits the last sentence.

Kentucky omits the last sentence of this section.

The sections above were referred to as sections 72 and 85 by mistake in the original New York act.

In North Carolina the word "otherwise" is omitted after the words "when Saturday is not," and a second section in the amenditory act is added in the following words: "There shall be no difference between Saturday and any other secular or business day, as far as negotiable instruments are concerned."

The Wisconsin act (Sec. 1681-3) omits the last sentence, while the Colorado act (Sec. 146) substitutes for the last sentence the following: "When any day is in part a holiday, presentment for acceptance may be made during reasonable hours of the part of such day which is not a holiday."

Corresponding provision of the English Bills of Exchange Act: Sec. 92.

**§ 147. Presentment; where time is insufficient.** Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.<sup>1a</sup>

See text, § 153.

Cross section: 143.

Corresponding provision of the English Bills of Exchange Act: Sec. 39 (4).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*New York.*—*Baldwins Bk. of Pen Yan v. Smith* (1915), 215 N. Y. 76, 109 N. E. 138.

**§ 148. Where presentment excused.** Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance in either of the following cases:

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill:

2. Where after the exercise of reasonable diligence, presentment cannot be made;

3. Where although presentment has been irregular, acceptance has been refused on some other ground.<sup>1a</sup>

See text, § 92.

Cross section: 145, Subd. 2.

Corresponding provisions of the English Bills of Exchange Act: Sec. 41 (2) (a), 41 (2) (b), 41 (2) (c).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Arkansas.*—*Jaggers v. Sparks* (1917), 193 S. W. 67.

*Illinois.*—*Simonoff v. Granite City Nat. Bk.* (1917), 116 N. E. 636.

**§ 149. When dishonored by non-acceptance.** A bill is dishonored by non-acceptance:

1. When it is duly presented for acceptance, and such an acceptance as is prescribed by this act is refused or cannot be obtained; or,

2. When presentment for acceptance is excused and the bill is not accepted.<sup>1a</sup>

See text, § 154.

In the North Carolina act (Sec. 149) the word "executed" is used instead of the word "excused."

Corresponding provisions of the English Bills of Exchange Act: Sec. 43 (1) (a) (b).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*New York.*—*Nat. Park Bk. v. Saitta* (1908), 127 A. D. 624, 111 N. Y. Supp. 927.

**§ 150. Duty of holder where bill not accepted.** Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers.<sup>1a</sup>

See text, § 154.

Cross section: 117.

Corresponding provisions of the English Bills of Exchange Act: Sec. 42.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*New York.*—*Nat. Park Bk. v. Saitta* (1908), 127 A. D. 624, 111 N. Y. Supp. 927.

**§ 151. Rights of holder where bill not accepted.** When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder, and no presentment for payment is necessary.<sup>1a</sup>

See text, § 154.

Corresponding provisions of the English Bills of Exchange Act: Sec. 43 (2).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*New York.*—*Nat. Park Bk. v. Saitta* (1908), 127 A. D. 624, 111 N. Y. Supp. 927.



## ARTICLE XII.

### PROTEST OF BILLS OF EXCHANGE.

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|---|---|
| <p>§ 152. In what cases protest necessary.</p> <p>153. Protest; how made.</p> <p>154. Protest; by whom made.</p> <p>155. Protest; when to be made.</p> <p>156. Protest; where made.</p> | <p>§ 157. Protest both for non-acceptance and non-payment.</p> <p>158. Protest before maturity where acceptor insolvent.</p> <p>159. When protest dispensed with.</p> <p>160. Protest; where bill is lost, et cetera.</p> |
|---|---|

Sections 152 to 160 above are the sections used by the commissioners.

See table of corresponding sections of the Law in the various states and territories beginning on page 360.

**§ 152. In what cases protest necessary.** Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance, is dishonored by a non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.<sup>1, 1a</sup>

See text, § 178.

Cross sections: 129, 118.

Corresponding provision of the English Bills of Exchange Act: Sec. 51(2).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Holder is entitled to recover, from the drawer of a dishonored foreign bill, re-exchange although the foreign currency has depreciated since the drawing of the bill. *Simonoff v. Granite City Nat. Bank*, 279 Ill. 248, 116 N. E. 636.

Protest of notes under former statute not now required. *Williams v. Paintsville Nat. Bank*, 143 Ky. 781, 137 S. W. 535, Ann. Cas. 1912D, 350.

Legality of payment is governed by law where bill is made payable. *Belestin v. First Nat. Bank*, 177 Mo. App. 300, 164 S. W. 160.

Law of place of drawing controls the liability of drawer. *Casper v. Kuhne*, 79 Misc. Rep. 411, 140 N. Y. Supp. 86.

Recovery is the amount of money required to purchase the stipulated amount of foreign money at date of maturity. *Gross v. Mendel*, 171 App. Div. 237, 157 N. Y. Supp. 357.

Drawer's liability fixed by law of place where he draws the bill of exchange and not where payable. *Amsinck v. Rogers*, 189 N. Y. 252, 82 N. E. 134, 12 L. R. A. (N. S.) 875, 121 Am. St. Rep. 858.

Affect of depreciations of currency in country where drawn on a bill calling for payment in a foreign country in the money of the latter. *Pavenstedt v. N. Y. Life Ins. Co.*, 203 N. Y. 90, 96 N. E. 104, Ann. Cas. 1913A, 805.

Notes placed on same basis as a bill of exchange renders them subject to bill of exchange statute of limitations. *Pensacola Bank v. Thornberry*, 226 Fed. Rep. 611, 141 C. C. A. 367.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Illinois*.—*Sublette Ex. Bk. v. Fitzgerald* (1912), 168 Ill. App. 240; *Simonoff v. Granite City Nat. Bank*, 279 Ill. 248, 116 N. E. 636.

*Kentucky*.—*Williams v. Paintsville Nat. Bank*, 143 Ky. 781, 137 S. W. 535, Ann. Cas. 1912D, 350.

*New York*.—*Amsinck v. Rogers* (1907), 189 N. Y. 252, 82 N. E. 134, 12 L. R. A. (N. S.), 875, 121 Am. St. 858; *McBride v. Illinois Nat. Bk.* (1910), 138 A. D. 339; *Casper v. Kuhne* (1913), 140 N. Y. Supp. 86; *Gross v. Mendel*, 171 App. Div. 237, 157 N. Y. Supp. 357; *Pavenstedt v. N. Y. Life ns. Co.*, 203 N. Y. 90, 96 N. E. 104, Ann. Cas. 1913A, 805.

*Missouri*.—*Belestin v. First Nat. Bank*, 177 Mo. App 300, 164 S. W. 160.

*South Carolina*.—*City Nat. Bk. v. Givin* (1916), 87 S. E. 998.

*Tennessee*.—*Wasterhouse v. Sterchi Bros.* (1918), 201 S. W. 150.

*West Virginia*.—*Deming Nat. Bk. v. Baker* (1919), 98 S. E. 438.

*United States*.—*Pensacola Bank v. Thornberry*, 226 Fed. Rep. 611, 141 C. C. A. 367.

§ 153. **Protest; how made.** The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

1. The time and place of presentment;
2. The fact that presentment was made and the manner thereof;
3. The cause or reason for protesting the bill;

4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.<sup>1</sup> <sup>1a</sup>

See text, § 175.

Corresponding provision of the English Bills of Exchange Act: Sec. 51 (7).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Protest must be under seal of protest officer showing him proper protest officer or the liability of the drawer is not established. *London & River Plate Bank v. Carr*, 54 Misc. Rep. 94, 105 N. Y. Supp. 679.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Illinois*.—*Sublette Ex. Bk. v. Fitzgerald* (1912), 168 Ill. App. 240.

*New York*.—*London & River Plate Bk. v. Carr* (1904), 105 N. Y. Supp. 679, 54 Misc. Rep. 94.

**§ 154. Protest; by whom made.** Protest may be made by:

1. A notary public; or,

2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.<sup>1a</sup>

See text, § 175.

In the Arkansas act the word "responsible" was used for the word "respectable" in subsection 2.

In the second subsection of the Washington act the word "responsible" was substituted for "respectable."

Corresponding provision of the English Bills of Exchange Act: Sec. 94.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Hooper v. Herring* (1915), 70 So. 308.

*Illinois*.—*Sublette Ex. Bk. v. Fitzgerald* (1912), 168 Ill. App. 240.

*New York*.—*McGrath v. Francoline* (1915), 156 N. Y. Supp. 981.

**§ 155. Protest; when to be made.** When a bill is protested, such protest must be made on the day of its dishonor, unless

delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.<sup>1, 1a</sup>

See text, § 175.

Cross section: 159.

Corresponding provision of the English Bills of Exchange Act: Secs. 51 (4), 93; 51 (4).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Drawer of check is not entitled to protest notice after countermanding payment. *First Nat. Bank v. Korn* (Mo. App.), 179 S. W. 721.

Protest invalid where noting of protest on bill dated on day prior to protest. *McPherson v. Wright*, 12 Sess. Cas. 942.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Missouri*.—*First Nat. Bk. of Grant City v. Korn* (1915), 179 S. W. 721.

*New York*.—*Amsinck v. Rogers*, 103 App. Div. 428, 93 N. Y. Supp. 87.

**§ 156. Protest; where made.** A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable and no further presentment for payment to, or demand on, the drawee is necessary.<sup>1a</sup>

See text, § 175.

Corresponding provision of the English Bills of Exchange Act: Secs. 51 (6) and 51 (6) (b).

**§ 157. Protest both for non-acceptance and non-payment.** A bill which has been protested for non-acceptance may be subsequently protested for non-payment.<sup>1a</sup>

See text, § 175.

Corresponding provision of the English Bills of Exchange Act: Sec. 51 (3).

**§ 158. Protest before maturity where acceptor insolvent.** Where the acceptor has been adjudged bankrupt or an insolvent or has made an assignment for the benefit of creditors, before

the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorser.

See text, § 180.

Corresponding provision of the English Bills of Exchange Act. Sec. 51 (5).

**§ 159. When protest dispensed with.** Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.<sup>1a</sup>

See text, § 179.

Cross sections: 109, 115, 117.

Corresponding provision of the English Bills of Exchange Act: Sec. 51 (9).

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Kansas*.—*Dillon v. Bron* (1915), 150 Pac. 553.

**§ 160. Protest where bill is lost, et cetera.** Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.<sup>1</sup>

See text, § 180.

Corresponding provision of the English Bills of Exchange Act: Sec. 51 (8).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Bank is liable for checks lost in the mail while being forwarded for collection. *Heinrich v. First Nat. Bank of Middletown*, 219 N. Y. 1, 113 N. E. 531.

## ARTICLE XIII.

### ACCEPTANCE OF BILLS OF EXCHANGE FOR HONOR.

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|--|---|
| <p>§ 166. Maturity of bill payable after sight; accepted for honor.</p> <p>167. Protest of bill accepted for honor, et cetera.</p> <p>168. Presentment for payment to acceptor for honor; how made.</p> <p>169. When delay in making presentment is excused.</p> <p>170. Dishonor of bill by acceptor for honor.</p> | <p>§ 161. When bill may be accepted for honor.</p> <p>162. Acceptance for honor; how made.</p> <p>163. When deemed to be an acceptance for honor of the drawer.</p> <p>164. Liability of acceptor for honor.</p> <p>165. Agreement of acceptor for honor.</p> |
|--|---|

Sections 161 to 170 above are the sections used by the commissioners.

See table of corresponding sections of the law in the various states and territories beginning on page 360.

**§ 161. When bill may be accepted for honor.** Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn.

The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.<sup>1a</sup>

See text, § 93.

Corresponding provision of the English Bills of Exchange Act: See 1st par. 65 (1), 2nd par. 1st and 2nd Clause 65 (2).

<sup>1a</sup> This section construed:

*New York.*—Canning v. Lane (1913), 139 N. Y. Supp. 884.

**§ 162. Acceptance for honor; how made.** An acceptance for honor *supra* protest must be in writing, and indicate that it

is an acceptance for honor, and must be signed by the acceptor for honor.<sup>1a</sup>

See text, § 93.

Corresponding provision of the English Bills of Exchange Act: Sec. 65 (3).

<sup>1a</sup> This section construed:

*Louisiana*.—Thiel v. Butker (1910), 125 La. 473, 51 So. 500.

*New York*.—German-Am. Bk. v. Cunningham (1904), 97 A. D. 244, 89 N. Y. Supp. 836.

**§ 163. When deemed to be an acceptance for honor of the drawer.** Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.<sup>1a</sup>

See text, § 93.

Corresponding section of the English Bills of Exchange Act: Sec. 65 (3).

<sup>1a</sup> This section construed:

*New York*.—German-Am. Bk. v. Cunningham (1904), 97 A. D. 244, 89 N. Y. Supp. 836.

*Rhode Island*.—McLean v. Bryer (1903), 24 R. I. 599, 54 Atl. 373.

**§ 164. Liability of acceptor for honor.** The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

See text, § 93.

Corresponding section of the English Bills of Exchange Act: Sec. 66 (2).

**§ 165. Agreement of acceptor for honor.** The acceptor for honor, by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.<sup>1a</sup>

See text, § 93.

Corresponding section of the English Bills of Exchange Act: Sec. 66 (1).

<sup>1a</sup> This section construed:

*New York.*—German-Am. Bk. v. Cunningham (1904), 97 A. D. 244, 89 N. Y. Supp. 836.

**§ 166. Maturity of bill payable after sight, accepted for honor.** Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

See text, § 93.

Corresponding section of the English Bills of Exchange Act: Sec. 65 (5).

**§ 167. Protest of bill accepted for honor, et cetera.** Where a dishonored bill has been accepted for honor *supra* protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

See text, § 93.

Corresponding section of the English Bills of Exchange Act: Sec. 67 (1).

**§ 168. Presentment for payment to acceptor for honor, how made.** Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity;

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred four.

See text, § 93.

In North Carolina the words "in this chapter specified" are substituted for "section one hundred four" in subsection 2.

Corresponding section of the English Bills of Exchange Act: Sec. 67 (2).

**§ 169. When delay in making presentment is excused.** The provisions of section one hundred and forty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.<sup>1a</sup>



See text, § 93.

In the original New York act, "section 81" instead of 141, by mistake.

Corresponding section of the English Bills of Exchange Act: Sec. 67 (3).

<sup>1a</sup> This section construed:

*New York*.—German-Am. Bk. v. Cunningham (1904), 97 A. D. 244, 89 N. Y. Supp. 836.

*Wisconsin*.—Curry v. Wis. Nat. Bk. (1912), 149 Wis. 413.

§ 170. Dishonor of bill by acceptor for honor. When the bill is dishonored by the acceptor for honor, it must be protested for non-payment by him.

See text, § 93.

Corresponding section of the English Bills of Exchange Act: Sec. 67 (4).

## ARTICLE XIV.

### PAYMENT OF BILLS OF EXCHANGE FOR HONOR.

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| <p>§ 171. Who may make payment for honor.</p> <p>172. Payment for honor; how made.</p> <p>173. Declaration before payment for honor.</p> <p>174. Preference of parties offering to pay for honor.</p> | <p>§ 175. Effect on subsequent parties where bill is paid for honor.</p> <p>176. Where holder refuses to receive payment <i>supra</i> protest.</p> <p>177. Rights of payer for honor.</p> |
|---|---|

Sections 171 to 177 above are the sections used by the commissioners.

See table of corresponding sections of the law in the various states and territories beginning on page 360.

**§ 171. Who may make payment for honor.** Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.<sup>1</sup> <sup>1a</sup>

See text, § 183.

Corresponding section of the English Bills of Exchange Act: Sec. 68 (1).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Drawer paying check after dishonor as for his honor or to discharge obligation. *Hooper v. Herring* (Ala.), 70 So. 308.

<sup>1a</sup> This section construed:

*Alabama*.—*Hooper v. Herring* (1915), 70 So. 308.

**§ 172. Payment for honor; how made.** The payment for honor *supra* protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

See text, § 183.

Corresponding section of the English Bills of Exchange Act: Sec. 68 (3).

**§ 173. Declaration before payment for honor.** The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

See text, § 183.

Corresponding section of the English Bills of Exchange Act: Sec. 68 (4).

**§ 174. Preference of parties offering to pay for honor.** Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.<sup>1a</sup>

See text, § 183.

Corresponding section of the English Bills of Exchange Act: Sec. 68 (2).

<sup>1a</sup> This section construed:

*Louisiana.*—*Cammer Bk. v. Sanders* (1914), 66 So. 854.

**§ 175. Effect on subsequent parties where bill is paid for honor.** Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

See text, § 183.

Corresponding section of the English Bills of Exchange Act: Sec. 68 (5).

**§ 176. Where holder refuses to receive payment *supra* protest.** Where the holder of a bill refuses to receive payment *supra* protest, he loses his right of recourse against any party who would have been discharged by such payment.

See text, § 183.

Corresponding section of the English Bills of Exchange Act: Sec. 68 (7).

**§ 177. Rights of payer for honor.** The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

See text, § 183.

Corresponding section of the English Bills of Exchange Act: Sec. 68 (6).

## ARTICLE XV.

### BILLS IN A SET.

§ 178. Bills in sets constitute one bill.	§ 181. Acceptance of bills drawn in sets.
179 Rights of holders where different parts are negotiated.	182. Payment by acceptor of bills drawn in sets.
180. Liability of holder who indorses two or more parts of a set to different persons.	183. Effect of discharging one of a set.

Sections 178 to 183 above are the sections used by the commissioners.

See table of corresponding sections of the law in the various states and territories beginning on page 360.

**§ 178. Bills in sets constitute one bill.** Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.<sup>1a</sup>

See text, § 60.

Corresponding provision of the English Bills of Exchange Act: Sec. 71 (1).

<sup>1a</sup> This section construed:

*New York.*—*Caras v. Thalman* (1910), 138 A. D. 297, 123 N. Y. Supp. 97; *Casper v. Kuhne*, 159 App. Div. 389, 144 N. Y. Supp. 502.

**§ 179. Rights of holders where different parts are negotiated.** Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

See text, § 60.

Corresponding provision of the English Bills of Exchange Act: Sec. 71 (3).

**§ 180. Liability of holder who indorses two or more parts of a set to different persons.** Where the holder of a set in-

dorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.<sup>1a</sup>

See text, § 60.

Corresponding provision of the English Bills of Exchange Act: Sec. 71 (2).

<sup>1a</sup> This section construed:

*Louisiana*—*Interstate Trust & Banking Co. v. Young* (1914), 65 So. 611.

**§ 181. Acceptance of bills drawn in sets.** The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

See text §§ 60, 86.

Corresponding provision of the English Bills of Exchange Act: Sec. 71 (4).

**§ 182. Payment by acceptor of bills drawn in sets.** When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.<sup>1a</sup>

See text, §§ 122, 60.

Corresponding provision of the English Bills of Exchange Act: Sec. 71 (5).

<sup>1a</sup> This section construed:

*Massachusetts*.—*Symonds v. Riley* (1905), 188 Mass. 470, 74 N. E. 926.

**§ 183. Effect of discharging one of a set.** Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.<sup>1, 1a</sup>

See text, §§ 122, 60.

The Wisconsin act inserts an article, not found in the other acts, entitled "Damages on Bills," as follows:

"§ 1682. Whenever any bill of exchange drawn or indorsed within this state and payable without the limits of the United States shall be duly protested for non-acceptance or non-payment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of the demand and damages at the rate of five per cent upon the contents thereof, together with interest on the said contents, to be computed from the date of the protest; and said amount of contents, damages and interest shall be in full of all damages, charges and expenses.

"§ 1683. If any bill of exchange drawn upon any person or corporation out of this state, but within some state or territory of the United States, for the payment of money shall be duly presented for acceptance or payment and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill with legal interest, according to its tenor and five per cent damages, together with costs and charges of protest."

Corresponding provision of the English Bills of Exchange Act: Sec. 71 (6).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

. Payment of part one of a two-part bill of exchange discharged both under French Code. *Caras v. Thalmann*, 138 App. Div. 297, 123 N. Y. Supp. 97.

Validity of payment in good faith of part of a bill of exchange where indorsements are forged. *Casper v. Kuhne*, 159 App. Div. 389, 144 N. Y. Supp. 502.

<sup>1a</sup> This section construed:

*New York*.—*Caras v. Thalmann* (1910), 138 A. D. 297, 123 N. Y. Supp. 97; *Casper v. Kuhne* (1913), 159 A. D. 389, 144 N. Y. Supp. 502.

## ARTICLE XVI.

### PROMISSORY NOTES AND CHECKS.

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| <p>§ 184. Promissory note defined.<br/>185. Check defined.<br/>186. Within what time a check must be presented.<br/>§ 187. Certification of check; effect of.</p> | <p>188. Effect where holder of check procures it to be certified.<br/>189. When check operates as an assignment.</p> |
|---|--|

Sections 184 to 189 above are the sections used by the commission.

See table of corresponding sections of the law in the various states and territories beginning on page 360.

**§ 184. Promissory note defined.** A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money, to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.<sup>1</sup> <sup>1a</sup>

See text, § 38.

Corresponding sections of the English Bills of Exchange Act: See 1st par. 83 (1); last par. 83 (2), 83 (1).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Certificate of deposit not ipso facto a negotiable instrument. *Clayton v. Bank of East Chattanooga*, — Ala. —, 85 So. 271.

Provisions which do not affect negotiability of note. *Navajo County Bk. v. Dolson*, 163 Cal. 485, 126 Pac. 153.

Negotiability not affected by certain provisions. *Longmont Nat. Bk. v. Loukonen*, 53 Colo. 489, 127 Pac. 947, Ann. Cas. 1914B, 208.

Extension of time provision affects the negotiability of note. *Union Stockyards Nat. Bank v. Bolan*, 14 Idaho 87, 93 Pac. 508, 125 American State Rep. 146.

Provisions not affecting negotiability. *Stitzel v. Miller*, 250 Ill. 72, 95 N. E. 53, 34 L. R. A. (N. S.) 1004, Ann. Cas. 1912B, 412.

Instrument not negotiable where impossible to fix time of payment. *Wayne County Nat. Bank v. Cook*, — Ind. App. —, 127 N. E. 773.

Provision for indefinite extension of time renders non-negotiable. *Woodbury v. Roberts*, 59 Iowa 348.

Negotiability not affected. *Farmer, Thompson & Helsell v. Bank*, 130 Iowa 469, 107 N. W. 170.

Clause giving consent of payee or holder to extensions renders note non-negotiable. *Manhard v. First Nat. Bank (Iowa)*, 165 N. W. 185.

Provision for extensions of time render note non-negotiable. *Ross-ville State Bank v. Heslet*, 84 Kan. 315, 113 Pac. 1052.

Negotiable instruments law make promissory notes on same footing as bills of exchange. *Williams v. Paintsville Nat. Bank*, 143 Ky. 781, 137 S. W. 535, Ann. Cas. 1912D, 350.

Negotiable instruments law changed the effect of the statute of limitations on promissory notes. *Southern Nat. Bank v. Schimpler*, 159 Ky. 372, 167 S. W. 148.

Effect on notes not negotiated before maturity. *Sim v. Citizen's Bank*, 173 Ky. 799, 191 S. W. 489.

Note not non-negotiable because of provisions for extension of time, notes becoming payable earlier upon bankruptcy and for application of properties to payment after maturity. *Hibernia Bank & Trust Co. v. Dresser*, 132 La. 538, 61 So. 569.

Conditions providing for extension of time, earlier due date because of bankruptcy and use of properties in paying note after maturity do not affect negotiability. *Bonart v. Rabito*, 141 La. 970, 76 So. 166.

Provisions which do not affect negotiability. *Wolfboro L. & B. Co. v. Rollins*, 195 Mass. 323, 81 N. E. 204.

What provisions in note do not affect its negotiability. *Davis v. McColl*, 176 Mo. App. 198, 166 S. W. 1113.

Provisions which do not change note's negotiability. *First Nat. Bk. v. Balchrim*, 100 Neb. 25, 158 N. W. 371.

Certificates of deposit "payable to the order of ourselves, on return of this certificate properly indorsed" as negotiable instruments. *Jensen v. Wilslef*, 36 Nev. 37, 132 Pac. 16.

Provision for extension of time by one or more of the parties to note without notice does not permit extension without notice to payee or holder. *First Nat. Bank v. Stover*, 21 N. M. 453, 155 Pac. 905, L. R. A. 1916D, 1280.

A promise to pay coupled with the statement "having been cause of a money loss" creates a valid promissory note. *Hickok v. Bunting*, 92 App. Div. 167, 86 N. Y. Supp. 1059.

When complaint must allege maker's indorsement. *Simon v. Mintz*, 51 Misc. Rep. 670, 101 N. Y. Supp. 86.

Maker's indorsement must be pleaded where note payable to his order. *Edelman v. Rams*, 58 Misc. Rep. 561, 109 N. Y. Supp. 816.

Payee maker's subsequent indorsement and negotiation binds indorser. *Yonker's Nat. Bank v. Mitchell*, 156 App. Div. 318, 141 N. Y. Supp. 128.

Extension of time provision as affecting negotiability. *First Nat. Bk. of Pomeroy v. Buttery*, 17 N. D. 226, 116 N. W. 341, 16 L. R. A. (N. S.) 878, 17 Ann. Cas. 52.

What provisions in note affect negotiability. *City Nat. Bk. v. Kelly (Okla.)*, 151 Pac. 1172.

Words "any extension of time of payment" indicate contemplation of more than one extension. *Pioneer Construction Co. v. First State Bank (Okla.)*, 158 Pac. 894.

Granting of extension of time provision as authority for more than one extension. *Kreemke v. Rademaker (Okla.)*, 159 Pac. 475.



Negotiability not affected by certain provisions. *Bank v. White*, 136 Tenn. 634, 191 S. W. 332.

Effect where note is payable to one of several makers. *Reid v. Windsor*, Ill. Va. 825, 69 S. E. 1101.

Negotiable note must be payable in money. *Rector v. Hancock*, — Va. —, 102 S. E. 663.

Certificate of deposit "payable on the return of this certificate properly indorsed" are negotiable instruments. *Forrest v. Safety Banking & Trust Co.*, 174 Fed. 345.

Sureties provision consenting to extension of time does not apply to joint makers. *Smith v. Nelson Land & Cattle Co.*, 212 Fed. Rep. 56, 128 C. C. A. 512.

A promise to pay to the order of A a specific sum of money held not a note but a contract. *Leiter v. Poindexter*, 220 Fed. Rep. 610, 136 C. C. A. 68.

Certificates of deposit are negotiable instruments when payable upon return properly indorsed. *National City Bank v. Titlow*, 233 Fed. 838.

The clause "No time given to, or security taken from, or composition or arrangement entered into, with either party hereto shall prejudice the rights of the holder to proceed against any other party," did not affect the note's negotiability. *Kirkwood v. Carroll* (1903), 1 K. B. 531.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Ger.-Am. Nat. Bk. v. Lewis* (1913), 63 So. 741; *Clayton v. Bk. of East Chattanooga*, 85 So. 271.

*Arizona*.—*Sherman v. Goodwin*, 11 Ariz. 141, 89 Pac. 517.

*California*.—*Navajo County Bk. v. Dolson*, 163 Cal. 485, 126 Pac. 153.

*Colorado*.—*Longmont Nat. Bank v. Loukonen*, 53 Colo. 489, 127 Pac. 947, Ann. Cas. 1914B, 208.

*Florida*.—*Baumeister v. Kuntz*, 53 Fla. 340, 42 So. 886.

*Illinois*.—*Van Kleeck v. Channon* (1912), 175 Ill. App. 626; *Stitzel v. Miller*, 250 Ill. 72, 95 N. E. 53, 34 L. R. A. (N. S.) 1004, Ann. Cas. 1912B, 412.

*Idaho*.—*Union Stock Yards Nat. Bk. v. Bolan* (1908), 14 Ida. 87, 93 Pac. 508, 125 Am. St. Rep. 146.

*Indiana*.—*Wayne County Nat. Bank v. Cook*, 127 N. E. 773.

*Iowa*.—*Farmer, Thompson & Helsell v. Bank*, 130 Iowa 469, 107 N. W. 170; *Quinn v. Bane* (Iowa), 164 N. W. 788; *Manhard v. First Nat. Bank* (Iowa), 165 N. W. 185; *Woodbury v. Roberts*, 59 Ia. 348.

*Kansas*.—*Rossville State Bk. v. Haslet*, 84 Kan. 315, 113 Pac. 1052.

*Kentucky*.—*Williams v. Paintsville Nat. Bank*, 143 Ky. 781, 137 S. W. 535, Ann. Cas. 1912D, 350; *Gahren v. Parkersburg Nat. Bank*, 157 Ky. 266, 162 S. W. 1135; *Pratt v. Rounds*, 160 Ky. 358, 169 S. W. 848; *Southern Nat. Bank v. Schimpler*, 159 Ky. 372, 167 S. W. 148; *Sims*

v. Citizens Bank, 173 Ky. 799, 191 S. W. 489; Alexander v. Hazelrigg (1906), 123 Ky. 677, 97 S. W. 353; Weltlaufer v. Baxter (1910), 137 Ky. 362, 125 S. W. 741

*Louisiana.*—Hibernia Bank & Trust Co. v. Dresser, 132 La. 538, 61 So. 569; Bonart v. Rabito, 141 La. 970, 76 So. 166.

*Massachusetts.*—Wolflord L. & B. Co. v. Rollins, 195 Mass. 323, 81 N. E. 204.

*Missouri.*—Market & Fulton Nat. Bk. v. Ettenson's Estate (1913), 158 S. W. 448; City Nat. Bank v. Goodloe-McClelland Com. Co., 93 Mo. App. 123; Davis v. McColl, 176 Mo. App. 198, 166 S. W. 1113.

*Nebraska.*—First Nat. Bk. v. Balchrim, 100 Neb. 25, 158 N. W. 371.

*Nevada.*—Jensen v. Wilslef, 36 Nev. 37, 132 Pac. 16.

*New Mexico.*—First Nat. Bank v. Stover, 21 N. M. 453, 155 Pac. 905, L. R. A. 1916D, 1280.

*New York.*—Hickok v. Bunting, 86 N. Y. Supp. 1059, 92 A. D. 167; Young v. Am. Bk. No. 1 (1904), 44 Misc. 305, 89 N. Y. Supp. 913; Young v. Am. Bk. No. 2 (1904), 44 Misc. 308, 89 N. Y. Supp. 915; Simon v. Murtz (1906), 51 Misc. 670, 101 N. Y. Supp. 86; Colborn v. Arbreen (1907), 54 Misc. 623, 104 N. Y. Supp. 968; Edelman v. Rams (1908), 58 Misc. 561, 109 N. Y. Supp. 816; Ed. Tr. Co. of N. Y. v. Newman (1910), 127 N. Y. Supp. 243; Yonkers Nat. Bk. v. Mitchell (1913), 156 A. D. 318, 141 N. Y. Supp. 128; Ryan v. Sullivan (1911), 143 A. D. 471.

*North Carolina.*—Perry Co. v. Taylor (1908), 148 N. Car. 362; Johnson v. Lasseter (1911), 155 N. Car. 47.

*North Dakota.*—Farquhar Co. v. Higham (1907), 16 N. Dak. 106, 112 N. W. 657; First Nat. Bk. of Pomeroy v. Buttery (1908), 17 N. Dak. 226, 116 N. W. 341, 16 L. R. A. (N. S.) 878, 17 Ann. Cas. 52.

*Oklahoma.*—Iowa State Sav. Bk. v. Wignall (1916), 157 Pac. 725; Missouri Trust Co. v. Long, 31 Okla. 1, 120 Pac. 291; De Groat v. Focht, 37 Okla. 267, 131 Pac. 172; City Nat. Bk. v. Kelly (Okla.), 151 Pac. 1172; Kremke v. Radamaker (Okla.), 159 Pac. 475; Pioneer Construction Co. v. First State Bank (Okla.), 158 Pac. 894.

*Pennsylvania.*—Milton Nat. Bk. v. Beaver (1904), 25 Pa. Super. Ct. 494.

*Tennessee.*—Bank v. White, 136 Tenn. 634, 191 S. W. 332; Moore v. Cary, 138 Tenn. 332, 197 S. W. 1093.

*Virginia.*—Rector v. Hancock, 102 S. E. 663; Reid v. Windsor, 111 Va. 825, 69 S. E. 1101.

*Wyoming.*—Brown v. Cow Creek Co., 21 Wyo. 1, 126 Pac. 886.

*United States.*—Forrest v. Safety Banking & Trust Co., 174 Fed. 345; Nat. City Bank v. Titlow, 233 Fed. 838; Leiter v. Poindexter 220 Fed. Rep. 610, 136 C. C. A. 68.

**§ 185. Check defined.** A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.<sup>1</sup> <sup>1a</sup>

See text, § 200.

Cross sections: Sec. 191. "bank."

Corresponding sections of the English Bills of Exchange Act: See 73 (the word "banker" appears instead of "bank" as above).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Instrument drawn on bank is check. *National Produce Bank of Chicago v. Dodds*, 205 Ill. App. 444.

Where drawer of check payable on demand stops payment it is the same as dishonored. *Patterson v. Oaks*, — Iowa —, 181 N. W. 787.

Check must be drawn on a bank. *Amsinck v. Rogers*, 103 App. Div. 428, 93 N. Y. Supp. 87, affirmed 189 N. Y. 252, 82 N. E. 134, 12 L. R. A. (N. S.) 875, 12 Am. St. Rep. 858.

Liability on check is governed by law of place where delivered. *Hennenlotter v. De Orvananos*, 186 N. Y. S. 488.

Cashier's checks are classed with bills of exchange payable on demand. *Singer Mfg. Co. v. Summers*, 143 N. C. 102, 55 S. E. 522.

Cashier's checks classed as bills of exchange. *Hannon v. Allegheny Bellevue Land Co.*, 44 Pa. Super. Ct. 266.

Certificate of deposit payable to order of payee on return properly indorsed is check. *State v. Garland*, 65 Wash. 666, 118 Pac. 907, 58 L. ed. 772.

Provision in check which does not render promise to pay conditional. *Brown v. Cow Creek Co.*, 21 Wyo. 1, 126 Pac. 886.

An order to pay "provided the receipt form at foot hereof is duly signed, stamped and dated," is not a check. *Bavins v. London & S. W. Bank* (1900), 1 Q. B. 270.

Requirement of receipt by payee affects negotiability of order to pay. *Capital & Counties Bank v. Gordon* (1903), A. C. 240, 252, 88 L. T. R. 574.

Provision that receipt on back must be signed held unconditional order to pay. *Nathan v. Ogdens* (K. B. Div. Aug. 1905), 21 T. L. R. 775, 93 L. T. Rep. 553.

Note at bottom of receipt for pension providing by whom it shall be presented and when renders it non-negotiable. *Jones & Co. v. Coventry* (1909), 2 K. B. 1029.

Check written on blank sheet of paper not rendered conditional as to bank by words "to be retained" on its face. *Roberts & Co. v. Marsh* (1915), 1 K. B. 42.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Colorado*.—*Van Buskirk v. State Bk. of Rocky Ford* (1905), 35 Colo. 142, 83 Pac. 778, 117 Am. St. 182; *Norman v. McCarthy* (1913), 138

Pac. 28; *Wedge Mines Co. v. Denver Nat. Bank*, 19 Colo. App. 182, 73 Pac. 873.

*Idaho*.—*Camas Prairie State Bk. v. Newman* (1909), 99 Pac. 833, 12 Id. 719.

*Illinois*.—*Sublette Ex. Bk. v. Fitzgerald* (1912), 168 Ill. App. 240; *People v. Miller* (1917), 116 N. E. 131, 278 Ill. 490; *Natl. Produce Bank of Chicago v. Dodds*, 205 Ill. App. 444.

*Indiana*.—*Williams v. Lowe* (1916), 113 N. E. 471.

*Iowa*.—*Patterson v. Oaks*, 181 N. W. 787.

*Kentucky*.—*Boswell v. Citizen's Sav. Bank*, 123 Ky. 485, 96 S. W. 797; *Ewing v. Cit. Nat. Bk.* (1915), 172 S. W. 955.

*Maryland*.—*American Agricultural Chemical Co. v. Scrimger* (1917), 100 Atl. 774.

*Massachusetts*.—*Symonds v. Riley* (1905), 188 Mass. 470, 74 N. E. 926; *Gordon v. Levine* (1907), 194 Mass. 418, 80 N. E. 505; *Gordon v. Levine* (1908), 197 Mass. 267, 83 N. E. 861, 15 L. R. A. (N. S.) 243.

*Missouri*.—*Nat. Bk. of Commerce v. Am. Nat. Bk.* (1910), 127 S. W. 429; *Nelson v. Diffenderffer* (1914), 178 Mo. App. 48, 163 S. W. 271; *Kansas City Gas Co. v. Westport Ave Bk.* (1915), 177 S. W. 1092.

*Nebraska*.—*Swenson Co. v. Commercial State Bk.* (1915), 154 N. W. 233.

*New York*.—*State Bk. v. Weiss* (1904), 46 Misc. 93, 91 N. Y. Supp. 276; *Amsinck v. Rogers* (1907), 189 N. Y. 252, 82 N. E. 134, 12 L. R. A. (N. S.) 875, 121 Am. St. 858; *Schlesinger v. Kurzrok* (1905), 94 N. Y. Supp. 442, 47 Misc. 634; *Riddle v. Bk. of Montreal* (1911), 145 A. D. 207, 130 N. Y. Supp. 15; *Casper v. Kuhne* (1913), 140 N. Y. Supp. 86; *Hennenlotter v. De Orvananos*, 186 N. Y. S. 488.

*North Carolina*.—*Singer Manufacturing Co. v. Summers* (1906), 143 N. Car. 102, 55 S. E. 522.

*Oklahoma*.—*Ballen & Friedman v. Bk. of Krenlin* (1913), 130 Pac. 539; *Turner v. Kimble* (1913), 130 Pac. 563.

*Oregon*.—*State v. Hammelsey* (1908), 52 Oreg. 156, 96 Pac. 865; *U. S. Nat. Bk. v. First Trust & Sav. Bk.* (1911), 60 Oreg. 266, 119 Pac. 343; *Triphonoff v. Sweeney* (1913), 130 Pac. 979.

*Pennsylvania*.—*Wisner v. First Nat. Bk. of Gallitzin* (1908), 220 Pa. 21, 68 Atl. 955, 17 L. R. A. (N. S.) 1266; *Hannon v. Allegheny Bellevue Land Co.* (1910), 44 Pa. Super. Ct. 266.

*Tennessee*.—*Unaka Nat. Bk. v. Butler* (1904), 113 Tenn. 574, 83 S. W. 655; *Am. Nat. Bk. v. Nat. Fertilizer Co.* (1911), 125 Tenn. 329, 143 S. W. 597; *First Nat. Bk. of Murfreesboro v. First Nat. Bk. of Nashville* (1913), 154 S. W. 965.

*Vermont*.—*First Nat. Bank of Montpelier v. Bertoli* (1914), 89 Atl. 359.

*Virginia*.—*B. & O. R. R. Co. v. First Nat. Bk.* (1904), 102 Va. 753, 47 S. E. 837.

*Washington*.—The State v. Garland (1911), 65 Wash. 666, 118 Pac. 907, 58 L. ed. 772; Peninsula Nat. Bk. v. Pederson (1916), 158 Pac. 246.

*Wisconsin*.—Columbian Banking Co. v. Bowen (1908), 134 Misc. 218, 114 N. W. 451.

*Wyoming*.—Brown v. Cow Creek Co. (1912), 126 Pac. 886.

§ 186. Within what time a check must be presented. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.<sup>1</sup> <sup>1a</sup>

See text, § 202.

Cross section: 193.

In Illinois the words "and notice of dishonor given to the drawer as provided for in the case of bills of exchange" are interpolated after the words "after its issue."

Corresponding section of the English Bills of Exchange Act: Sec. 74 (1).

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Affect of successive transfers where check delivered at same place where drawee bank is located at time for presentment for payment. Swift & Co. v. Miller, 62 Ind. App. 312, 113 N. E. 447.

Forwarding check to drawee in a distant place for collection rather than collection agent not shown harmful Citizens' Bank v. First Nat. Bank, 135 Iowa 605, 113 N. W. 481, 13 L. R. A. (N. S.) 303.

Burden of proof in suit upon check not presented for payment within reasonable time. Cox v. Citizens' State Bank, 73 Kan. 789, 85 Pac. 762.

Failure of payee or indorsers to present check by close of following day discharges drawer. Gordon v. Levine, 194 Mass. 418, 80 N. E. 505, 120 Am. St. Rep. 565.

Failure of holder of check to present it for payment for an additional day within which time drawer had failed, renders holder an ordinary creditor. Furber v. Dane, 203 Mass. 108, 89 N. E. 227.

Time for presentment for payment not extended by clearing house custom. Edminston v. Herpresheimer, 66 Neb. 94, 92 N. W. 138.

Defendant must show his loss occasioned by failure to present for payment within reasonable time. Dehoust v. Lewis, 128 N. Y. App. Div. 131, 112 N. Y. Supp. 559.

Due diligence in view of the New York clearing house custom. Zalloom v. Gamlin, 72 Misc. Rep. 36, 129 N. Y. Supp. 85.

Time for presentment for payment is not extended by transfer to successive holders where delivered in same place where drawee bank is located.—Sulsberger & Sons Co. v. Cramer, 170 App. Div. 114, 155 N. Y. Supp. 775.

Clearing House Association cannot change law merchant rules. Columbia-Knickerbocker Trust Co. v. Miller, 215 N. Y. 191, 109 N. E. 179.

Drawers contract is that check will be paid upon presentment. *Linton v. Columbia Trust Co.* 185 N. Y. S. 198.

Affect of forwarding check to drawee bank for collection. *Pickett v. Thomas J. Baird Co.*, 22 N. D. 343, 133 N. W. 1026.

Delay necessary to discharge drawer of check where drawn on bank in same town. *Matlock v. Scheuerman*, 51 Ore. 49, 93 Pac. 823, 17 L. R. A. (N. S.) 747.

The drawing out of the firm's money by one partner and settlement of partnership without ascertaining whether firm check had been paid held cause of loss and not failure of presentment for payment. *Heralds of Liberty v. Hurd*, 44 Pa. Super. Ct. 478.

Holding tellers check on local bank for two days released the indorser because of unreasonable delay in presentment for payment. *Hannon v. Allegheny Bellevue Land Co.*, 44 Pa. Super Ct. 266.

New York Clearing House Association custom as to presentment for payment of checks received after banking hours as affecting the time of presentment. *Willis v. Finley*, 173 Pa. 28, 34 Atl. 213.

Defendant has burden of showing loss by reason of failure to present for payment within reasonable time. *Rosenbaum v. Hazard*, 233 Pa. 206, 82 Atl. 62.

When time for presentment for payment is not extended by clearing house custom. *Dorchester v. Merchants Bank*, 106 Tex. 201, 163 S. W. 5, 50 L. R. A. (N. S.) 542.

Burden of proof where payee negligent in giving notice of check's dishonor. *Morris-Miller Co. v. Von Pressentin*, 63 Wash. 74, 114 Pac. 912.

Effect of failure to present check for payment within reasonable time. *Ger.-Am. Bank v. Wright*, 85 Wash. 460, 148 Pac. 769.

When bank becomes prima facie owner of check deposited, it must present same for payment within reasonable time to bind payee. *Aebi v. Bank of Evansville*, 124 Wis. 73, 102 N. W. 329, 68 L. R. A. 964, 109 Am. St. Rep. 925.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Alabama*.—*Wallace v. City Nat. Bk. of Decatur* (1919), 80 So. 405.

*Iowa*.—*Citizens Bank v. First Nat. Bank* 135 Iowa. 505, 113 N. W. 481, 13 L. R. A. (N. S.) 303; *Plover Sav. Bk. v. Moodie* (1906), 135 Iowa 685, 110 N. W. 29.

*Kansas*.—*Cox v. Citizens State Bank*, 73 Kan. 789, 85 Pac. 762.

*Massachusetts*.—*Gordon v. Levine* (1907), 194 Mass. 418, 80 N. E. 505; *Gordon v. Levine* (1909), 197 Mass. 263, 83 N. E. 861, 15 L. R. A. (N. S.) 243; *Furber v. Dane* (1909), 203 Mass. 108, 89 N. E. 227.

*Missouri*.—*First Nat. Bk. of Grant City v. Korn* (1915), 179 S. W. 721; *City of Brunswick v. Peoples Sav. Bk.* (1916), 190 S. W. 60.

*Nebraska*.—*Edminston v. Herpresheimer*, 66 Neb. 94, 92 N. W. 138.

*New York*.—*Moskowitz v. Deutsch*, 46 Misc. Rep. 603, 92 N. Y. Supp. 721; *Kramer v. Grant* (1908), 111 N. Y. Supp. 709; *Dehoust v. Lewis* (1908), 128 A. D. 131, 112 N. Y. Supp. 559; *Zaloom v. Gamin* (1911),

129 N. Y. Supp. 85, 72 Misc. Rep. 36; Knickerbocker Tr. Co. v. Miller (1912), 133 N. Y. Supp. 989; Sulsberger & Sons Co. v. Cramer (1915), 155 N. Y. Supp. 775; McEwen Bros. v. Cobb (1918), 172 N. Y. Supp. 44; Columbia-Knickerbocker Trust Co. v. Miller, 215 N. Y. 191, 109 N. E. 179; Linton v. Columbia Tr. Co., 185 N. Y. S. 198.

*North Carolina.*—Singer Mfg. Co. v. Summers (1906), 143 N. Car. 102, 55 S. E. 522; Bk. of Mt. Airy v. Greensboro Loan & Tr. Co. (1912), 159 N. Car. 85, 74 S. E. 747.

*North Dakota.*—Pickett v. Thomas J. Baird Co., 22 N. D. 343, 133 N. W. 1026.

*Oklahoma.*—School District v. Eager, 19 Okla. 235, 91 Pac. 847; Turner v. Kimble, 37 Okla. 92, 130 Pac. 563.

*Oregon.*—Matlock v. Scheuerman (1908), 51 Oreg. 49, 93 Pac. 823, 17 L. R. A. (N. S.) 747.

*Pennsylvania.*—Hannon v. Allegheny Bellevue Land Co. (1910), 44 Pa. Super. Ct. 266; Rosenbaum v. Hazard (1911), 233 Pa. 206, 82 Atl. 62; Willis v. Finley, 173 Pa. 28, 34 Atl. 213.

*Texas.*—Dorchester v. Merchants Bank, 106 Tex. 201, 163 S. W. 5, 50 L. R. A. (N. S.) 542.

*Washington.*—Morris-Miller Co. v. Van Pressentin, 63 Wash. 74, 114 Pac. 912; Hunt v. Panhandle Lumber Co. (1912), 66 Wash. 645, 120 Pac. 538; Peninsula Nat. Bk. v. Pederson (1916), 158 Pac. 246; German-American Bank v. Wright, 85 Wash. 460, 148 Pac. 769.

*Wisconsin.*—Aebi v. Bk. of Evansville (1905), 124 Wis. 73, 102 N. W. 329, 68 L. R. A. 964, 109 Am. St. 925; Columbia Banking Co. v. Bowen (1908), 134 Misc. 218, 114 N. W. 451.

§ 187. **Certification of check; effect of.** Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance.<sup>1, 1a</sup>

See text, § 203.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Certification of post dated check which was delivered to payee rendered bank liable upon presentment even if before date of check. *Smith v. Field*, 19 Idaho, 558, 114 Pac. 668, Ann Cas. 1912C, 354.

Acceptance or certification of check discharges drawer. *State Bank of Chicago v. Mid-City Trust and Savings Bank.* — Ill. —, 129 N. E. 498.

Certification is equal to acceptance. *Commercial Bank of Woodville, Miss., v. First Nat. Bank.* — La. —, 86 So. 342.

Certified post dated check as creating liability of bank at once. *Mohawk Bank v. Broderick* (N. Y.), 10 Wend. 304, 13 Wend. 133.

Effect of post dating check and having same certified without funds in bank. *Clarke Nat. Bank v. Bank of Albin* (N. Y.), 52 Barb. 592.

Notice to stop payment because of loss of check does not justify refusal to pay holder in due course. *Poess v. Twelfth Ward Bank*, 43 Misc. Rep. 45, 86 N. Y. Supp. 857.

Indorsee of check had same certified after death of payee and drawer's request for stopping payment and bank held liable thereon. *Meuer v. Phenix Nat. Bank*, 94 App. Div. 331, 88 N. Y. Supp. 83.

Bank is liable on certified check to the holder only. *Schlesinger v. Kurzrok*, 47 Misc. Rep. 634, 94 N. Y. Supp. 442.

Certification of check as preventing drawer or drawee setting up set-off against liability on check. *Carnegie Trust Co. v. First Nat. Bank*, 213 N. Y. 301, 107 N. E. 693, L. R. A. 1916C, 186.

Certifying bank's liability not changed by question of deposit in bank. *Security State Bank v. State Bank of Brantford*, 31 N. D. 454, 154 N. W. 282.

Bank certifying check where no funds on deposit is liable to holder in due course. *National City Bank v. Titlow*, 233 Fed. Rep. 838.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Idaho*.—*Smith v. Field* (1911), 19 Ida. 558, 114 Pac. 668, Ann Cas. 1912C, 354.

*Illinois*.—*State Bank of Chicago v. Mid-City Trust & Savings Bank*, 129 N. E. 498.

*Louisiana*.—*Commercial Bank of Woodville, Miss. v. First Nat. Bank*, 86 So. 342.

*Massachusetts*.—*Elliott v. Worcester Tr. Co.* (1905), 189 Mass 542, 75 N. E. 944.

*New York*.—*Poess v. Twelfth Ward Bk.* (1904), 43 Misc. 45, 86 N. Y. Supp. 857; *Meuer v. Phenix Nat. Bk.* (1904), 94 A. D. 331, 88 N. Y. Supp. 83; *Schlesinger v. Kurzrok* (1905), 94 N. Y. Supp. 442, 47 Misc. 634; *St. Regis Paper Co. v. Gonswanada B. & P. Co.* (1905), 107 A. D. 90, 94 N. Y. Supp. 945; *Gallo v. Brooklyn Sav. Bk.* (1910), 199 N. Y. 222; *Davenport v. Palmer* (1912), 152 A. D. 761; *McMahon v. Roseville Tr. Co.* (1913), 125 A. D. 640, 144 N. Y. Supp. 841; *Carnegie Trust Co. v. First Nat. Bank of City of N. Y.* (1915), 107 N. E. 693, 213 N. Y. 301, L. R. A. 1916C, 186; *Baldinger & Kupferman Mfg. Co. v. Manf. Citizens Tr. Co.* (1915), 156 N. Y. Supp. 445; *Nat. Reserve Bk. of N. Y. City v. Corn Exchange Bk.* (1916), 157 N. Y. Supp. 316.

*North Dakota*.—*Security State Bk. v. State Bk. of Brandtford* (1915), 31 N. D. 454, 154 N. W. 282.

*Oregon*.—*First Nat. Bk. of Cottage Grove v. Bk. of Cottage Grove* (1911), 59 Oreg. 388, 117 Pac. 293.

*South Dakota*.—*First Nat. Bk. v. Brule Nat. Bk.* (1917), 161 N. W. 616.

*Tennessee*.—*Unaka Nat. Bk. v. Butler* (1904), 113 Tenn. 674, 83 S. W. 655; *Pease & Dwyer Co. v. State Nat. Bk.* (1905), 114 Tenn. 693, 88 S. W. 172; *Farmers & Merchants Bk. v. Bank of Rutherford* (1905), 115 Tenn. 64, 88 S. W. 939.



**§ 188. Effect where the holder of check procures it to be certified.** Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.<sup>1</sup> <sup>1a</sup>

See text, § 203.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Holder procuring certification of check received in a letter which designated that it was in full payment releases drawer. *Scheffenacker v. Hooper*, 113 Md. 111, 77 Atl. 130.

Drawer who at payee's request has check certified is not discharged. *Randolph Nat. Bank v. Hornblower*, 160 Mass. 401, 35 N. E. 850.

Affect of delay in presentment of check certified at drawer's request. *City of Brunswick v. People's Sav. Bank*, 194 Mo. App. 360, 190 S. W. 60.

Where payee defrauded drawer and the latter returned the property to payee and directed that payment on check be stopped the fact that payee had had check certified did not bind drawer. *Merchants Exch. Nat. Bank v. New Brunswick Savings Inst.*, 33 N. J. L. 170.

Holder procuring certification of check releases the drawer but it is otherwise where drawer has check certified. *Times Square Automobile Co. v. Rutherford Nat. Bank*, 77 N. J. L. 649, 73 Atl. 479.

Drawer not discharged by payee's acceptance of certified check even if bank transfers funds in bank to payee without the latter's knowledge. *Cullinan v. Union Surety & Guaranty Co.*, 79 App. Div. 409, 80 N. Y. Supp. 58.

Holder's procurement of certification of check providing that it was in full payment releases drawer. *St. Regis Paper Co. v. Tonawanda Co.*, 107 App. Div. 90, 94 N. Y. Supp. 946.

Affect of holder having certified a check sent to him in a letter stating that it was in full payment. *Dunn v. Whalen*, 120 App. Div. 729, 105 N. Y. Supp. 588.

Drawer is not discharged when he has check certified. *Davenport v. Palmer*, 152 App. Div. 761, 137 N. Y. Supp. 796.

Holder procuring certification of check releases drawer. *Adams v. Weissner*, 147 N. Y. Supp. 946.

Effect of bank's acceptance of certification of check after drawee bank refused to pay same. *Lyons v. Union Exch. Nat. Bank*, 150 App. Div. 493, 135 N. Y. Supp. 121.

Certification at holder's request releases only prior indorsers. *John J. Felin & Co. v. Petrix*, 167 N. Y. Supp. 1073.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Massachusetts*.—*Randolph Nat. Bank v. Hornblower*, 160 Mass. 401, 35 N. E. 850.

*Maryland*.—*Scheffenacker v. Hooper*, 113 Md. 111, 77 Atl. 130.

*Missouri*.—*Nat. Bk. of Rolla v. First Nat. Bk. of Salem* (1910), 141 Mo. 719, 125 S. W. 513; *Nat. Bk. of Commerce v. Mech. Am. Nat.*

Bk. (1910), 127 S. W. 429; *City of Brunswick v. Peoples Sav. Bk.* (1916), 190 S. W. 60.

*New Jersey.*—*Merchants Exchange Bank v. New Brunswick Sav. Inst.* 33 N. J. L. 170; *Times Square Auto Co. v. Rutherford Nat. Bk.* (1909), 77 N. J. L. 649, 73 Atl. 479.

*New York.*—*Culliman v. Union Surety & Guaranty Co.* (1903), 79 A. D. 409, 80 N. Y. Supp. 58; *Meuer v. Phenix Nat. Bk.* (1904), 94 A. D. 331, 88 N. Y. Supp. 83; *St. Regis Paper Co. v. Tonawanda B. & P. Co.* (1905), 107 A. D. 90, 94 N. Y. Supp. 946; *Dunn v. Whalen* (1907), 120 A. D. 729, 105 N. Y. Supp. 588; *Schlesinger v. Kurzrok*, 47 Misc. Rep. 634, 94 N. Y. Supp. 442; *Gallo v. Brooklyn Sav. Bk.* (1910), 199 N. Y. 222, 92 N. E. 633, 32 L. R. A. (N. S.) 66; *Davenport v. Palmer* (1912), 152 A. D. 761; *Lyons v. Union Ex. Nat. Bk. of N. Y.* (1912), 135 N. Y. Supp. 121, 150 A. D. 493; *Cor. Tr. Co. v. First Nat. Bk. of City of N. Y.* (1913), 156 A. D. 712, 141 N. Y. Supp. 745; *McMahon v. Roseville Tr. Co.* (1913), 125 A. D. 640, 144 N. Y. Supp. 841; *Adams v. Weissner*, 147 N. Y. Supp. 946; *Carnegie Trust Co. v. First Nat. Bk. of City of N. Y.* (1915), 107 N. E. 693, 213 N. Y. 301; *Felin v. Petrix* (1918), 167 N. Y. Supp. 1073.

*Oregon.*—*First Nat. Bk. of Cottage Grove v. Bk. of Cottage Grove* (1911), 59 Oreg. 388, 117 Pac. 393.

*Oklahoma.*—*Cherokee Nat. Bk. v. Union Tr. Co.* (1912), 33 Okla. 342, 125 Pac. 464.

§ 189. **When check operates as an assignment.** A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.<sup>1</sup> <sup>1a</sup>

See text, § 207.

Corresponding section of the English Bills of Exchange Act: Sec. 53 (1), 73.

<sup>1</sup> Digest of some of the decisions in which this section is construed arranged alphabetically by states:

Telephone communication with bank about to cash check not binding on drawee bank as acceptance. *Van Buskirk v. State Bank*, 35 Colo. 142, 83 Pac. 778, 117 Am. St. Rep. 182.

Depositor's check does not operate as assignment although deposited for purpose of paying check as against garnishment of bank. *Kaesemeyer v. Smith*, 22 Idaho, 1, 123 Pac. 943, 43 L. R. A. (N. S.) 100 note.

Check is not assignment pro tanto in favor of administrator. *Cook v. Lewis*, 172 Ill. App. 518.

Check as evidence of a valid assignment in a gift *causa mortis*. *First Nat. Bank v. O'Byrne*, 177 Ill. App. 473.

When check operates as an assignment of funds. *National Produce Bank of Chicago v. Dodd*, 205 Ill. 444.

Payee of check to whom an assignment of funds is given may recover against drawee. *Hove v. Stanhope State Bank*, 138 Iowa 39, 115 N. W. 476.

Drawee not liable to holder on check which drawee said was good. *Rambo v. First State Bank*, 88 Kan. 257, 128 Pac. 182.

Agreement by bank and drawer to pay drawer's checks for cattle binds bank even if payees did not know of agreement. *Ballard v. Bank*, 91 Kan. 91, 136 Pac. 935.

Papee allowed to recover where bank erroneously paid check upon a forged indorsement of payee's name. *Chamberlain Metal, etc., Co. v. Bank of Pleasanton*, 98 Kan. 611, 160, Pac. 1138.

Affect of agreement of drawer and drawee as to drawer's checks in payment for cattle upon payee's rights to enforce payment. *Saylors v. Bank*, 99 Kan. 515, 163 Pac. 454.

Depositing of money for express purpose of paying a check is not assigned by issuance of the check. *Boswell v. Citizens' Savings Bank*, 123 Ky. 485, 96 S. W. 797.

Drawee bank not bound by telephone communication in which cashier told another bank check was good. *Ewing v. Citizens' Nat. Bank*, 162 Ky. 551, 172 S. W. 955.

Drawee bank not liable to payee on an unaccepted or uncertified check. *First Nat. Bank v. Hargis, etc., Bank*, 170 Ky. 690, 186 S. W. 471.

Acceptance by drawee renders him liable as primary obligor. *Commercial Bank of Woodville, Miss. v. First Nat. Bank*. — La. —, 86 So. 342.

Words "To be applied on paper held by L. if found correct" written across face of check is notice to indorsee of L.'s interest therein. *Slimmer v. State Bank of Halstead*, 134 Minn. 349, 159 N. W. 795.

Drawee is bound to pay check where drawer withdrew all funds except enough to pay the check. *Gruenther v. Bank of Monroe*, 90 Neb. 280, 133 N. W. 402.

Issuance of check is assignment of funds deposited for purpose of paying the check. *Farrington v. F. E. Fleming, etc., Co.*, 94 Neb. 108, 142 N. W. 297, 47 L. R. A. (N. S.) 742.

Drawee's statement that check is good and will be paid upon presentment does not render drawee liable to holder. *Superior Nat. Bank v. National Bank of Commerce*, 99 Neb. 833, 157 N. W. 1023.

Affect of countermanding order before payment to or certification for holder of check. *National Bank v. Berrall*, 70 N. J. Law 757, 58 Atl. 189, 103 Am. St. Rep. 821.

A check is not an assignment against the drawee but the drawer. *Elgin v. Gross-Kelly Co.*, 20 N. M. 450, 150 Pac. 922, L. R. A. 1916A, 711.

Check presented to branch of drawee bank, being stamped paid and credit given to account of depositor may be returned as not accepted. *Balsam v. Mutual Alliance Trust Co.*, 74 Misc. Rep. 465, 132 N. Y. Supp. 325.

Payee cannot enforce payment of check returned by drawee to collection bank through the clearing house because the drawer had made assignment for creditors. *Hentz v. National City Bank*, 159 App. Div. 743, 144 N. Y. Supp. 979.

Right of drawer's administrator to recover from drawee, where payment made without notice of drawer's death. *Glennan v. Rochester Trust, etc., Co.*, 209 N. Y. 12, 102 N. E. 537, 52 L. R. A. (N. S.) 302, Ann Cas. 1915A, 441.

Drawer who gave check to supposed agent of payee is not bound when supposed agent had it certified and forged name of payee. *Anglo-South Am. Bank v. National City Bank*, 161 App. Div. 268, 146 N. Y. Supp. 457, affirmed 217 N. Y. 726.

Check to his betrothed in contemplation of suicide held against public policy and not an assignment as against bank or administrator of estate. *Bainbridge v. Hoes*, 163 App. Div. 870, 149 N. Y. Supp. 20.

Drawee bank not liable in suit by payee on check paid by drawee to payee's agent although agent had no authority. *Elyria Sav. etc., Co. v. Walker Bin Co.*, 92 Ohio St. 406, 111 N. E. 147, L. R. A. 1916D, 433.

Bank certifying check by mistake can correct mistake by notice to holder before check passed to holder in due course. *Security Sav. & Trust Co. v. King*, 69 Ore. 228, 138 Pac. 465.

Check is not assignment of drawer's cause of action against bank. *Marks v. First Nat. Bank*, 84 Ore. 601, 165 Pac. 673.

Effect of drawee paying checks to plaintiffs agent and charging same against payee's account. *Tibby Bros. Glass Co. v. Farmers' & Mechanics' Bank*, 220 Pa. 1, 69 Atl. 280, 15 L. R. A. (N. S.) 519.

Before payment or certification the drawer may countermand the order. *Pease & Dwyer v. State Nat. Bank*, 114 Tenn. 693, 88 S. W. 172.

Where bank advised of agreement of assignment of certain funds by check between drawer and payee check is an assignment. *People's Nat. Bk. v. Swift*, 134 Tenn. 175, 183 S. W. 725.

Bank not liable to payee where it had charged to drawer's account checks indorsed by payee's agent. *B. & O. Ry. Co. v. First Nat. Bank*, 102 Va. 753, 47 S. E. 837.

The writing of a letter asking that checks be protected by drawee bank is not sufficient as an assignment of the drawers money and the presentation of check through clearing house and giving payee credit is not always acceptance. *Eastman Kodak Co. v. Nat. Park Bk.* 231 Fed. Rep. 320.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Colorado*.—*Van Buskirk v. State Bk. of Rocky Ford* (1905), 35 Colo. 142, 83 Pac. 778, 117 Am. St. 182.

*Idaho*.—*Smith v. Field* (1911), 19 Ida. 558, 114 Pac. 668; *Kaesemeyer v. Smith* (1912), 22 Ida. 1, 123 Pac. 943.

*Illinois*.—*Cook v. Lewis*, 172 Ill. App. 518; *The First Nat. Bk. of Chicago v. O'Byrne* (1913), 177 Ill. App. 473; *Nat. Produce Bank of Chicago v. Dodd*, 205 Ill. 444.

*Iowa*.—*Hove v. Stanhope State Bk.* (1908), 138 Iowa 39, 115 N. W. 476.

*Kansas*.—*Rambo v. First State Bank*, 88 Kan. 257, 128 Pac. 182; *Ballard v. Bank*, 91 Kan. 91, 136 Pac. 935; *Saylors v. Bank*, 99 Kan. 515, 163 Pac. 454; *Chamberlain Metal Co. v. Bank of Pleasanton*, 98 Kan. 611, 160 Pac. 1138.

*Kentucky*.—*Boswell v. Citizen's Sav. Bk.* (1906), 123 Ky. 485; 96 S. W. 797; *Ewing v. Cit. Nat. Bk.* (1915), 162 Ky. 551, 172 S. W. 955; *First Nat. Bank v. Hargis, etc., Bank*, 170 Ky. 690, 186 S. W. 471.

*Louisiana*.—Commercial Bank of Woodville, Miss. v. First Nat. Bank, 86 So. 342.

*Michigan*.—Lonier v. State Sav. Bk. (1907), 149 Mich. 483, 112 N. W. 1119.

*Minnesota*.—Slimmer v. State Bank of Halstead, 134 Minn. 349, 159 N. W. 795.

*Missouri*.—Kansas City, etc., Co. v. Westport Ave. Bank, 191 Mo. App. 287, 177 S. W. 1092.

*New Jersey*.—Nat. Bk. of New Jersey v. Berrall (1904), 70 N. J. L. 757, 50 Atl. 189, 103 Am. St. Rep. 821.

*New Mexico*.—Hanna v. McCray, 19 N. M. 183, 141 Pac. 996; Elgin v. Gross-Kelly Co., 20 N. M. 450, 150 Pac. 922, L. R. A. 1916A, 711.

*Nebraska*.—Superior Nat. Bank v. National Bank of Commerce, 99 Neb. 833, 157 N. W. 1023; Farrington v. F. E. Fleming, etc., Co., 94 Neb. 108, 142 N. W. 297, 47 L. R. A. (N. S.) 742; Gruenther v. Bank of Monroe, 90 Neb. 280, 113 N. W. 402.

*New York*.—Poess v. Twelfth Ward Bk. (1904), 43 Misc. 45, 86 N. Y. Supp. 857; Meuer v. Phenix Nat. Bank (1904), 94 A. D. 331, 88 N. Y. Supp. 83; State Bk. v. Weiss (1904), 46 Misc. 93, 91 N. Y. Supp. 276; Schlesinger v. Kurzrok (1905), 94 N. Y. Supp. 442, 47 Misc. 634; Glennan v. Rochester Tr. etc., Co., 209 N. Y. 12, 102 N. E. 537, 52 L. R. A. (N. S.), 302, Ann. Cas. 1915A, 441; Lawrence v. Fox, 20 N. Y. 268; Ellery v. People's Bk. (1909), 114 N. Y. Supp. 108; Havana Cent. R. Co. v. Knickerbocker Trust Co (1910. 135 A. D. 313; Balsam v. Mutual Alliance Tr. Co. (1911), 132 N. Y. Supp. 325, 74 Misc. Rep. 465; Shattuck v. Guardian Tr. Co. (1912), 130 N. Y. Supp. 658, 145 A. D. 734; Bursten v. Peoples Tr. Co., 143 A. D. 165, 127 N. Y. Supp. 1092; Anglo-South Am. Bk. v. Nat. City Bk. of N. Y. (1914), 146 N. Y. Supp. 457, affirmed 217 N. Y. 726; Cor. Tr. Co. v. First Nat. Bk. of City of New York (1913), 156 A. D. 712, 141 N. Y. Supp. 745; Hentz v. Nat. City Bank of N. Y. (1913), 159 A. D. 743, 144 N. Y. Supp. 979; Siegel v. Kovinsky, 157 N. Y. Supp. 340, 93 Misc. Rep. 541; Bainbridge v. Hoes, 149 N. Y. Supp. 20, 163 A. D. 870.

*North Carolina*.—Perry v. Bk. of Smithfield (1902), 131 N. Car. 117, 42 S. E. 551.

*North Dakota*.—Crisp v. State Bank of Rollo, 32 N. D. 263, 155 N. W. 263, 155 N. W. 78.

*Ohio*.—Elyria Sav. etc., Co. v. Walker Bin Co. 72 Ohio St. 406, 111 N. E. 147, L. R. A. 1916D, 433.

*Oklahoma*.—Ballen & Friedman v. Bk. of Krenlin (1913), 37 Okla. 112, 130 Pac. 539.

*Oregon*.—Marks v. First Nat. Bank, 84 Ore. 601, 165 Pac. 673; U. S. Nat. Bk. v. First Trust & Sav. Bk. (1911), 60 Oreg. 266, 119 Pac. 343; Security Sav. & Trust Co. v. King, 69 Ore. 228, 138 Pac. 465.

*Pennsylvania*.—Tibby Bros. Glass Co. v. Farmers & Mech. Bk. of Sharpsburg (1908), 220 Pa. 1, 69 Atl. 280, 15 L. R. A. (N. S.) 519.

*Tennessee*.—Unaka Nat. Bk. v. Butler (1904), 113 Tenn. 674, 83 S. W. 655; Pease & Dwyer Co. v. State Nat. Bk. (1905), 114 Tenn. 693, 88 S. W. 172; First Nat. Bk. of Murfreesboro v. First Nat. Bk. of Nashville (1913), 127 Tenn. 205, 154 S. W. 965; People's Nat. Bank v. Swift, 134 Tenn. 175, 183 S. W. 725.

*Virginia*.—B. & O. R. R. Co. v. First Nat. Bk. (1904), 102 Va. 753, 47 S. E. 837.

*Wisconsin*.—Roesser v. National Exchange Bank, 112 Wis. 591, 88 N. W. 618, 88 Am. St. Rep. 979; Jacobson v. Bedtzler (1906), 127 Wis. 566; Bank of Sioux City v. Old Nat. Bk. of Battle Creek (1917), 241 Fed. 1.

## ARTICLE XVII.

### GENERAL PROVISIONS.

§ 190. Short title.	§ 194. Time, how computed; when last day falls on holiday.
191. Definitions and meaning of terms.	195. Application of chapter.
192. Persons primarily liable on instrument.	196. Rule of law merchant; when governs.
193. Reasonable time, what con- stitutes.	

Sections 190 to 196 above are the sections used by the commissioners.

See table of corresponding sections of the Law in the various states and territories beginning on page 360.

**§ 190. Short title.** This act shall be known as the Negotiable Instruments Law.<sup>1a</sup>

See text, § 12.

Arizona, Connecticut, District of Columbia, Kentucky, Massachusetts, Nebraska, New Hampshire, North Carolina, Ohio, Rhode Island and Wisconsin acts omit this section.

In some states "may be cited" is substituted for "shall be known." The word "uniform" is inserted before the word "negotiable" in some states.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed.

*Connecticut*.—Atwood v. Atwood (1913), 86 Atl. 29.

*Kentucky*.—Callaghan v. Louisville Dry Goods Co. (1910), 14 Ky. 712, 131 S. W. 995.

*Missouri*.—Dickey v. Adler (1910), 127 S. W. 593.

### CONSTANT POLICY OF COURTS SHOULD BE TO ESTABLISH UNIFORMITY OF DECISION.

Uniformity of decision as to the Negotiable Instruments Law should be the policy of our courts. Since uniformity was the end and aim of the compilers and framers of the Law, there should be one rule to determine the rights of a holder of

negotiable instruments in all jurisdictions. The history of the act is well known. The laws relating to negotiable paper had not been uniform in the different states and as such paper circulated between the different states it was important to the commercial world that the laws of the different states relating thereto should be uniform.<sup>1</sup> The law merchant is essentially the creation of the business world, whose practices have hardened into principles, and these principles have been shaped and polished for centuries by the lapsidaries of the law—all to one supreme end, viz., the protection of a bona fide holder for value who has acquired a negotiable instrument in the due course of trade or business. Only such protection can give confidence, and only confidence can give free currency to any medium of exchange. This is the capstone of the structure known as "Commercial Law." Its codification into a Uniform Negotiable Instruments Law has been accomplished, not for the purpose of altering any of its essential principles, and certainly not for the purpose of destroying or weakening its cardinal principle, but for the purpose of harmonizing certain minor differences existing in the various jurisdictions.<sup>2</sup> The result accomplished should be protected at all times by a uniformity of court decision in construing its various provisions. The primary purpose of the several states that have adopted the negotiable instruments act has been to establish a uniform rule of law governing such instruments and to embody in a codified form, as fully as possible, the previous law on the subject to the end that the negotiable character of commercial paper might not be destroyed by local laws and conflicting decisions, and this object should be kept in mind in construing the various provisions of the act.<sup>3</sup> Not only were the courts of the country in conflict respecting the attitude and liability of a third party—a stranger—who placed his name in blank on the back of commercial paper, but the situation was in itself an anomalous one calculated to lead, as it often did lead, to confusion respecting the duty of the holder of such paper with regard to demand and notice. Mistakes in this respect were easy and were frequently made, often resulting in litigation, and, not infrequently, loss. To clear this situation up, and to establish a plain, easily understood rule, and one of universal application, was surely a result of high importance to all who deal in commercial paper, and the desire to

<sup>1</sup> *Windsor Cement Co. v. Thompson* (1913), 86 Conn. 511, 514, 86 Atl. 1.

<sup>2</sup> *Ex Parte Goldberg v. Lewis*, 191 Ala. 356, 366, 67 So. 839, L. R. A. 1915F, 1157.

<sup>3</sup> *Bank of Halstad v. Bilstad* (1913), 162 Ia. 433, 435, 136 N. W. 204, 144 N. W. 363.



accomplish this purpose had much to do with inducing the enactment of the Negotiable Instruments Law.<sup>4</sup> The desirability of uniformity in the laws of various states, with reference to negotiable instruments is so obvious, the legislative intent to harmonize our theretofore conflicting decisions with those of other jurisdictions is, so clearly expressed, that full effect should be given thereto by uniformity of judicial interpretation and construction.<sup>5</sup>

It is a matter of common knowledge that the Negotiable Instruments Law was drafted for the purpose of codifying the law upon the subject of negotiable instruments and making it uniform throughout the country through adoption by the Legislatures of the several states and by the Congress of the United States. The design was to obliterate state lines as to the law governing instrumentalities so vital to the conduct of interstate commerce as promissory notes and bills of exchange, to remove the confusion or uncertainty which might arise from conflict of statutes or judicial decisions amongst the several states, and to make plain, certain and general the controlling rules of law. Diversity was to be moulded into uniformity.<sup>6</sup> Since the Negotiable Instruments Law has been enacted in all but one of our states, uniform construction is most desirable.<sup>7</sup> The effect of the uniform legislation upon court decisions is seen in a Maryland opinion, where it is said: "In all the states holding views similar to this court prior to the legislation the courts have expressly abrogated those old rules, and we, therefore, both by the reasoning and by the desire to comply with the spirit of the legislation as to uniformity, do declare our prior decisions on this point to be suspended."<sup>8</sup>

In another jurisdiction the court said: "When a question arises in one of the uniform statutes, and the courts of this state have not yet passed upon the interpretation of the portions of the statute involved, I conceive it to be the duty of the trial courts, in the interest of a real uniformity in the application of these commercial enactments, to adopt and follow here the interpretation adopted by the courts of other commonwealths."<sup>9</sup>

<sup>4</sup> *Rockfield v. First Nat. Bank* (1907), 77 Ohio St. 311, 331, 83 N. E. 392, 14 L. R. A. (N. S.) 842.

<sup>5</sup> *Broderick & Bascom Rope Co. v. McGrath*, 81 Misc. Rep. 199, 142 N. Y. Supp. 497.

<sup>6</sup> *Union Trust Co. v. McGinty* (1912), 212 Mass. 205, 98 N. E. 679, Ann. Cas. 1913C, 525; *Fox v. Terre Haute Nat. Bank* (1920), — Ind. App. —, 129 N. E. 33.

<sup>7</sup> *American Trust Co. v. Canevin* (1911), 184 Fed. 657, 663, 107 C. C. A. 543.

<sup>8</sup> *Leightner v. Roach* (1915), 126 Md. 474, 95 Atl. 62.

<sup>9</sup> *Brown v. Brown*, 91 Misc. Rep. 220, 154 N. Y. Supp. 1098.

**§ 191. Definitions and meaning of terms.** In this act, unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.<sup>1</sup> <sup>1a</sup>

See text, §§ 46, 53, 76, 128, 311.

<sup>1</sup> Digest of some of the decisions, in which this section is construed, arranged alphabetically by states:

Indorsement. *Louisville Co. v. International Trust Co.*, 18 Colo. App. 345, 71 Pac. 898.

Draft unknowingly made to fictitious payee is not payable to bearer. *American Exp. Co. v. Peoples Sav. Bank*, — Ia. —, 181 N. W. 701.

Placing in mail constitutes delivery. *Trego v. Cunningham's Estate*, 267 Ill. 367, 108 N. E. 350.

Maker in possession by theft after indorsed in blank by payee is bearer. *Mass. Nat. Bank v. Snow*, 187 Mass. 159, 72 N. E. 959.

Who holder in due course. *Merchants Nat. Bank of Billings v. Smith*, — Mont. —, 196 Pac. 523.

When name of maker may be filled in so that an indorsee from payee, for value before maturity may apply collateral to payment of note

and other obligations owing by maker. *Oleon v. Rosenbloom*, 247 Pa. 250, 93 Atl. 473, Ann. Cas. 1916B, 233, L. R. A. 1915 F, 968.

Definitions not applicable where context otherwise requires. *Smith v. Nelson Land & Cattle Co.*, 212 Fed. Rep. 56, 128 C. C. A. 512.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed:

*Arizona*.—*Gray v. Baron* (1910), 13 Ariz. 70, 108 Pac. 229.

*Colorado*.—*Louisville Coal & Mining Co. v. Int. Trust Co.* (1903), 18 Colo. App. 345, 71 Pac. 898.

*Connecticut*.—*Knapp Co. v. Tidewater Coal Co.* (1912), 85 Conn. 147, 81 Atl. 1063; *New Haven Mfg. Co. v. New Haven Pulp Co.* (1903), 76 Conn. 126, 55 Atl. 604.

*Florida*.—*Scott v. Taylor* (1912), 63 Fla. 612.

*Idaho*.—*Craig v. Palo Alto Stock Farm* (1901), 16 Ida. 701, 102 Pac. 393; *Rinker v. Lauer* (1907), 13 Ida. 163, 88 Pac. 1057.

*Illinois*.—*First Nat. Bk. of Manlius v. Garland* (1911), 160 Ill. App. 407; *Trego v. Cunningham's Estate*, 267 Ill. 367, 108 N. E. 350.

*Iowa*.—*Allison v. Hollembeak* (1908), 138 Iowa 479, 114 N. W. 1059; *Irwin v. Deming* (1909), 142 Iowa 299, 120 N. W. 645; *Vander Ploeg Van Zuuk* (1907), 13 L. R. A. (N. S.) 490, 135 Iowa 350, 112 N. W. 807; *Voss v. Chamberlain* (1908), 139 Iowa 569, 117 N. W. 269; *American Exp. Co. v. People's Sav. Bank*, 181 N. W. 701.

*Kansas*.—*Smith v. Nelson Land & Cattle Co.* (1914), 212 Fed. 56.

*Kentucky*.—*Ohio Valley Co. v. Great Southern Fire Ins. Co.* — Ky. —, 197 S. W. 399.

*Massachusetts*.—*Mass. Nat. Bank v. Snow*, 187 Mass. 159, 72 N. E. 959.

*Missouri*.—*Burchett v. Fink* (1909), 139 Mo. App. 381; *German-Am. Bk. v. Martin* (1908), 129 Mo. App. 484; *Bank of Houston v. Day*, 145 Mo. App. 410, 122 S. W. 756; *Greer v. Orchard* (1913), 161 S. W. 875; *Night & Day Bk. v. Rosenbaum* (1915), 177 S. W. 693; *Bank of Houston v. Day*, 145 Mo. App. 410, 122 S. W. 756.

*Montana*.—*Merchants Nat. Bank of Billings v. Smith*, 196 Pac. 523.

*Nebraska*.—*Aurora State Bk. v. Hayes-Eames Elevator Co.* (1911), 88 Neb. 187.

*New Jersey*.—*R. M. Owen & Co. v. Storms & Co.*, 78 N. J. L. 154, 72 Atl. 441.

*New York*.—*Barkley v. Muller* (1914), 149 N. Y. Supp. 620, 164 A. D. 351; *Davenport v. Palmer* (1912), 152 A. D. 761; *Gilbert v. Adams* (1911), 131 N. Y. Supp. 787; *Lyons v. Union Ex. Nat. Bk. of N. Y.* (1912), 135 N. Y. Supp. 121, 150 A. D. 493; *Manufacturer's Commercial Co. v. Blitz* (1909), 131 A. D. 17, 115 N. Y. Supp. 402; *Schwartzman v. Post* (1903), 84 N. Y. Supp. 922, 94 A. D. 474; *Wolfen v. Security Bk. of N. Y.* (1915), 156 N. Y. Supp. 474.

*North Carolina.*—Mayers v. McRimmon (1906), 140 N. Car. 640, 53 S. E. 447, 111 Am. St. 879; Steinhilper v. Basinight (1910), 153 N. Car. 293, 69 S. E. 222.

*Ohio.*—Moore v. Central Nat. Bk. of Cleveland (1910), 31 Ohio C. 614; Starr Piano Co. v. Edgar (1909), 31 Ohio C. 295.

*Pennsylvania.*—Nat. Bk. of Phoenixville v. Bonsor (1909), 38 Pa. Super. Ct. 275; Oleon v. Rosenbloom, 247 Pa. 250, 93 Atl. 473, Ann. Cas. 1916B, 233, L. R. A. 1915F, 968.

*Rhode Island.*—Wilbour v. Hawkins (1915), 38 R. I. 116, 94 Atl. 856.

*Tennessee.*—Farmers & Merchants Bk. v. Bk. of Rutherford (1905), 115 Tenn. 64, 88 S. W. 939, 112 Am. St. Rep. 817.

*Utah.*—Utah Nat. Bk. of Salt Lake City v. Nelson (1910), 38 Utah 169, 111 Pac. 907.

*Washington.*—Hillman v. Stanley (1909), 56 Wash. 320, 105 Pac. 816.

*Wisconsin.*—Schultz v. Kosbab (1905), 125 Wis. 157; Swanby v. Northern State Bk. (1912), 150 Wis. 572, 137 N. W. 763; Westberg v. Chicago Lumber Co. (1903), 117 Wis. 589, 94 N. W. 572.

*Wyoming.*—Acme Coal Co. v. Northrup Nat. Bk. of Iola (1915), 146 Pac. 593; Capitol Hill St. Bk. v. Rawlins Nat. Bk. (1916), 160 Pac. 1171.

*United States.*—Smith v. Nelson Land & Cattle Co., 212 Fed. Rep. 56, 128 C. C. A. 512.

§ 192. Person primarily liable on instrument. The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable.<sup>1, 1a</sup>

See text, § 119.

Cross sections: 18, 127, 189.

Kansas omits the last sentence.

South Dakota apparently has no section 192, but has the following sections between section 191 and 193:

"Section 192A. The apparent maturity of a bill of exchange, payable at sight, or on demand, is:

1. If it bears interest, one year after date; or,
2. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

Section 192B. The apparent maturity of a promissory note, payable at sight, or on demand, is:

2. If it bears interest, one year after its date; or,
2. If it does not bear interest, six months after its date,"

<sup>1</sup> Digest of some of the decisions, in which this section is construed, arranged alphabetically by states:

What statements as to transaction will not affect the negotiability of note. *Page v. Wooster*, 213 Ill. App. 239.

Persons primarily and secondarily liable. *Fox v. Terre Haute Nat. Bank*, — Ind. App. —, 129 N. E. 33.

Indorser not primarily liable on note given in substitution for one on which he was maker. *Devoy & Kuhn Coal Co. v. Huttig*, 174 Iowa 357, 156 N. W. 413.

Persons primarily liable. *National Bank of Webb City, Mo. v. Dickinson*, 102 Kan. 564.

Indorser is primarily liable to payee if note recites that signers, indorsers, guarantors and sureties are liable *in solido*. *Bonart v. Rabito*, 141 La. 970, 76 So. 166.

Accommodation maker is primarily liable. *First State Bank of Hilger v. Lang*, — Mont. —, 174 Pac. 597.

Accommodation maker a party primarily liable. *Merchants Nat. Bank of Billings v. Smith*, — Mont. —, 196 Pac. 523.

Principal and surety (co-maker) are primarily liable. *Robertson-Ruffin Co. v. Spain (N. C.)*, 91 S. E. 361.

Accommodation guarantor only secondarily liable without special contract. *Noble v. Beeman-Spaulding Co.*, 65 Ore. 93, 131 Pac. 1006, 46 L. R. A. (N. S.) 162.

Makers and indorsers severally liable. *Petri v. Manny*, 99 Wash. 601.

Co-makers primarily liable although one designated as surety. *In re Nashville Laundry Co.*, 240 Fed. Rep. 795.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed.

*Alabama*.—*Hudson Tr. Co. v. Elliott* (1915), 69 So. 631.

*Arizona*.—*Cowan v. Ramsay* (1914), 140 Pac. 501.

*Arkansas*.—*Burke v. Jefferson Bk.* (1915), 180 S. W. 500.

*Illinois*.—*Page v. Wooster*, 213 Ill. App. 239.

*Indiana*.—*Fox v. Terre Haute Nat. Bank*, 129 N. E. 33.

*Iowa*.—*Devoy & Kuhn Coal Co. v. Huttig*, 174 Iowa 357, 156 N. W. 413.

*Kansas*.—*Farmers & Drovers Bk. v. Bashor* (1916), 160 Pac. 208; *Nat. Bk. of Webb City v. Dickinson* (1918), 171 Pac. 636, 102 Kan. 564.

*Louisiana*.—*Lewy v. Wilkinson* (1914), 64 So. 1003; *Bonart v. Rabito*, 141 La. 970, 76 So. 166.

*Maryland*.—*Vanderford v. Farmers & Mech's Nat. Bk. of Westminster* (1907), 105 Md. 164, 66 Atl. 47.

*Massachusetts*.—*Union Tr. Co. v. McGinty* (1912), 212 Mass. 205, 98 N. E. 679.

*Michigan*.—*Lamberson v. Love* (1911), 165 Mich. 460.

*Minnesota.*—*Baxter v. Brandenburg* (1917), 163 N. W. 516.

*Missouri.*—*Citizens Bk. of Senath v. Douglass* (1913), 161 S. W. 601; *Lane v. Hyder* (1912), 163 Mo. App. 688, 147 S. W. 514; *Night & Day Bk. v. Rosenbaum* (1915), 177 S. W. 693.

*Montana.*—*First State Bank of Hilger v. Lang*, 174 Pac. 597; *Merchants Nat. Bank of Billings v. Smith*, 196 Pac. 523.

*New York.*—*Building & Engineering Co. v. Northern Bk. of N. Y.* (1912), 206 N. Y. 400, 99 N. E. 1044; *Graham v. York* (1910), 140 A. D. 639; *Nat. Citizens Bk. v. Toplitz* (1903), 81 N. Y. Supp. 422, *Schwartzman v. Post* (1903), 84 N. Y. Supp. 922, 94 A. D. 474.

*North Carolina.*—*Rouse v. Wooten* (1906), 140 N. Car. 557, 53 S. E. 430, 111 Am. St. 875; *Robertson-Ruffin Co. v. Spain* (N. C.), 91 S. E. 361.

*North Dakota.*—*Northern State Bk. v. Bellany* (1910), 125 N. W. 888.

*Ohio.*—*Dollar Sys. Bk. v. Barberton Pottery Co.* (1907), 17 Ohio Dec. 539; *Richards v. Market Ex. Bk.* (1910), 81 Ohio St. 348, 55 Ohio Law Bull. 20.

*Oregon.*—*Cellers v. Meachem* (1907), 49 Oreg. 186, 10 L. R. A. (N. S.), 133; *Everding & Farrell v. Taft* (1916), 160 Pac. 1160; *Hunter v. Harris* (1912), 63 Oreg. 505, 127 Pac. 786; *Lumberman's Nat. Bk. of Portland v. Campbell* (1912), 61 Oreg. 123, 121 Pac. 427; *Murphy v. Panter* (1912), 62 Oreg. 522, 125 Pac. 292; *Noble v. Beeman-Spauling-Woodwar Co.* (1913), 65 Oreg. 93, 131 Pac. 1006, 46 L. R. A. (N. S.), 162.

*Rhode Island.*—*Deahy v. Choquet* (1907), 28 R. I. 338, 67 Atl. 421, 14 L. R. A. (N. S.) 847.

*Texas.*—*Hackney Mfg. Co. v. Celum* (1916), 189 S. W. 988.

*Utah.*—*Wostenholme v. Smith* (1908), 34 Utah 300, 97 Pac. 329.

*Washington.*—*Bradley Engineering & Mfg. Co. v. Heyburn* (1910), 56 Wash. 629, 106 Pac. 170; *Pease v. Syler* (1914), 138 Pac. 310; *Petri v. Manny*, 99 Wash. 601.

*United States.*—*In re Nashville Laundry Co.*, 240 Fed. Rep. 795.

§ 193. Reasonable time, what constitutes. In determining what is a "reasonable time" or an "unreasonable time" regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instrument, and the facts of the particular case.<sup>1</sup> <sup>1a</sup>

See text, § 291.

Corresponding provision of the English Bills of Exchange Act: Sec. 40 (3), 45 (2) 73, 74 (2), 86 (2), 89 (1), 74.

<sup>1</sup> Digest of some of the decisions, in which this section is construed, arranged alphabetically by states;

"Reasonable time" is question for jury, if facts in dispute. *Sheffield v. Cleland*, 19 Idaho, 612, 115 Pac. 20.

Demand one year after date unreasonable time. *Greer v. Downing*, 176 Ill. App. 355.

"Reasonable time" held question for jury on undisputed facts. *Citizens' Bank v. First Nat. Bank*, 135 Iowa 605, 113 N. W. 481, 13 L. R. A. (N. S.) 303.

Demand must be made within four months in Kentucky account of local custom. *Frazee v. Phoenix Nat. Bank*, 161 Ky. 175, 170 S. W. 532.

What is reasonable time. *American Nat. Bank v. Patterson*, — La. —, 83 So. 218.

Demand must be made in sixty days on demand note in accordance with prior state law if evidence shows it not within this section. *Merritt v. Jackson*, 181 Mass. 69, 62 N. E. 987.

Demand must be made in compliance with prior state law if not controlled by this section. *Plymouth County Trust Co. v. Scanlon*, 227 Mass. 71, 116 N. E. 468.

Disputed facts make "reasonable time" a jury question. *First Nat. Bank v. Korn* (Mo. App.), 179 S. W. 721.

When demand after seven months not unreasonable time. *Becker v. Horowitz*, 114 N. Y. Supp. 161.

When facts not disputed "reasonable time" is question for court. *Zaloom v. Ganin*, 72 Misc. Rep. 36, 129 N. Y. Supp. 85.

Delay of two years in presenting demand not held question for jury as to reasonable time. *Hussey v. Sutton*, 96 Misc. Rep. 552, 160 N. Y. Supp. 934.

Negotiation of demand note more than three months after date was within reasonable time, in absence of contrary showing. *Weber v. Hirsch*, 163 N. Y. Supp. 1086.

Four years as reasonable time on demand note. *Van Buren v. Wensley*, 169 N. Y. S. 789.

When "reasonable time" is question for court or jury. *Commercial Bank v. Zimmerman*, 185 N. Y. 210, 77 N. E. 1020.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed.

*Arkansas*.—*Thornton v. Bowie* (1916), 185 S. W. 793.

*Idaho*.—*Sheffield v. Cleland* (1911), 19 Ida. 612, 115 Pac. 20.

*Illinois*.—*Greer v. Downing* (1912), 176 Ill. App. 355; *Simonoff v. Granite City Nat. Bk.* (1917), 116 N. E. 636.

*Iowa*.—*Citizens' Bank v. First Nat. Bank*, 135 Iowa 605, 113 N. W. 481, 13 L. R. A. (N. S.) 303; *Anderson v. First Nat. Bk. of Chariton* (1909), 144 Iowa 251, 122 N. W. 918; *LeClere v. Philpott* (1915), 151 N. W. 825; *Plover Sav. Bk. v. Moodie* (1906), 135 Iowa 685, 110 N. W. 29; *In re Estate of Philpott*, 169 Iowa 555, 151 N. W. 825.

*Kentucky*.—*Frazee v. Phoenix Nat. Bank*, 161 Ky. 175, 170 S. W. 532.

*Louisiana*.—*American Nat. Bank v. Patterson*, 83 So. 218.

*Massachusetts*.—*Gordon v. Levine* (1907), 194 Mass. 418, 80 N. E. 505; *Gordon v. Levine* (1908), 197 Mass. 267, 83 N. E. 861, 15 L. R. A. (N.

S.) 243; *Merritt v. Jackson* (1902), 181 Mass. 69, 62 N. E. 987; *Plymouth County Trust Co. v. Scanlon* (1917), 227 Mass. 71, 116 N. E. 468.

*Missouri*.—*First Nat. Bank v. Korn*, — Mo. App. —, 179 S. W. 721.

*New Jersey*.—*Hills Sav. & Drawing Club v. Baronowitz* (1916), 97 Atl. 28.

*New York*.—*Hussey v. Sutton*, 160 N. Y. Supp. 934, 96 Misc. Rep. 552; *Commercial Nat. Bk. v. Zimmerman* (1906), 185 N. Y. 210, 77 N. E. 1020; *Van Buren v. Wensley*, 102 Misc. Rep. 248, 169 N. Y. Supp. 789; *Weber v. Hirsch* (1917), 163 N. Y. Supp. 1086; *Zaloom v. Ganim* (1911), 129 N. Y. Supp. 85; *Van Buren v. Wensley*, 169 N. Y. S. 789.

*North Carolina*.—*Singer Manufacturing Co. v. Summers* (1906), 143 N. Car. 102, 55 S. E. 522.

*Pennsylvania*.—*Hannon v. Allegheny Bellevue Land Co.* (1910), 44 Pa. Super. Ct. 266; *Murray v. Real Est. Title Ins. & Tr. Co.* (1909), 39 Pa. Super. Ct. 438.

*Rhode Island*.—*McLean v. Bryer* (1903), 24 R. I. 599, 54 Atl. 373.

*Virginia*.—*Brown v. Thomas* (1917), 92 S. E. 977; *Colona v. Parkley Bk.* (1917), 92 S. E. 979.

*West Virginia*.—*Thompson v. Curry* (1917), 91 S. E. 801.

§ 194. Time, how computed; when last day falls on holiday. Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.<sup>1</sup> <sup>1a</sup>

See text, § 291.

See the New York Statutory Construction Law as to computing of time (§§ 26, 27).

This provision changes the rule of the law merchant, but affirms the previous statutory rule in many jurisdictions.

Corresponding provisions of the English Bills of Exchange Act: Sec. 14 (1) (a) (b), 92; 14 (1).

North Carolina Act omits this section, but it is found in a chapter entitled "Sunday and Holidays" as section 2839.

<sup>1</sup> Digest of some of the decisions, in which this section is construed, arranged alphabetically by states:

Accommodation maker is liable. *Farmers' State Bank of North Powder v. Forsstrom*, — Oreg. —, 173 Pac. 935.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed.



*Colorado*.—*Babcock v. The City of Rocky Ford* (1914), 25 Colo. App. 312.

*District of Columbia*.—*Ambrose v. Brown* (1914), 42 App. D. C. 25.

*Oregon*.—*Murphy v. Panter* (1912), 125 Pac. 292; *Farmers' State Bank of North Powder v. Forsstrom*, 173 Pac. 935.

§ 195. **Application of chapter.** The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof.<sup>1</sup>

See text, § 299.

Arizona act omits this section.

Florida General Statutes omits this section.

Minnesota Statute adds the following at the end of the section: "Nor shall they be construed as modifying, repealing or superseding any of the terms and provisions of section 2747 Revised Laws 1905 (section 6015, General Statutes 1913)."

South Dakota Act adds the following provision at the end: "Nothing in this act contained shall be construed in any manner repealing chapters 128, 140 and 141 of the Laws of 1905 and chapter 74 of the Laws of 1907."

<sup>1</sup> Digest of some of the decisions in which this section is construed, arranged alphabetically by states:

What law governs in novation discharge defense. *Gorin v. Wiley*, 215 Ill. App. 541.

Act does not apply to indorsement of note executed before act was in effect. *Gate City Nat. Bank v. Schmidt*, 168 Mo. App. 153, 152 S. W. 101.

N. I. L. not applicable to actions on instruments delivered prior to its becoming effective. *Dorsey v. Wellman*, 85 Neb. 262, 122 N. W. 989.

N. I. L. controls actions on instruments delivered after statute became effective. *Fassler v. Streit*, 92 Neb. 786, 139 N. W. 628.

Indorsement after act of a note made prior to act is not controlled by act. *McIntosh v. Gibbs*, 81 N. J. L. 37, 80 Atl. 554, Ann. Cas. 1912D, 163.

Act not intended to make prior non-negotiable instruments negotiable or to impair the obligation of contracts. *Adams v. Thurmond* (Okla.), 149 Pac. 1141.

Actions to which N. I. L. apply. *Voris v. Birdsall* (Okla.), 153 Pac. 673.

What instruments are controlled by N. I. L. *Cox v. Kirkwood* (Okla.), 158 Pac. 930.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed.

*Arkansas*.—*Parish v. Smith* (1918), 204 S. W. 415.

*Colorado.*—*Louisville Coal & Mining Co. v. Int. Trust Co.* (1903), 18 Colo. App. 45, 71 Pac. 898.

*Illinois.*—*Gorin v. Wiley*, 215 Ill. App. 541.

*Missouri.*—*Gate City Nat. Bk. v. Schmidt* (1912), 152 S. W. 101.

*Nebraska.*—*Dorsey v. Wellman* (1909), 85 Neb. 262, 122 N. W. 989; *Fassler v. Street* (1913), 92 Neb. 786, 139 N. W. 628.

*New Jersey.*—*McIntosh v. Gibbs*, 81 N. J. Law, 37, 80 Atl. 554, Ann. Cas. 1912D, 163.

*North Carolina.*—*Meyers v. McRimmon* (1906), 140 N. Car. 640, 53 S. E. 447, 111 Am. St. 879.

*Oklahoma.*—*Adams v. Thurmond* (Okla.), 149 Pac. 1141; *Voris v. Birdsall* (Okla.), 153 Pac. 673.

§ 196. Law merchant; when governs. In any case not provided for in this act the rules of the law merchant shall govern.<sup>1</sup> 1a

See text, § 299.

Kentucky omits this section.

Iowa adds the following: "Sec. 198. Days of grace—demand made on. A demand made on any one of the three following days following the day of maturity of the instrument, except on Sunday or a holiday, shall be as effectual as though made on the day on which demand may be made under the provisions of this act, and the provisions of this act as to notice of non-payment, non-acceptance, and as to protest shall be applicable with reference to such demand as though the demand were made in accordance with the terms of this act; but the provisions of this section shall not be construed as authorizing demand on any day after the third day, from that on which the instrument falls due according to its face."

Corresponding provision of the English Bills of Exchange Act: See 97 (2).

In some of the states the section reads: "The rules of law and equity including the law merchant."

<sup>1</sup> Digest of some of the decisions, in which this section is construed, arranged alphabetically by states:

One who holds note indorsed in blank transferred to him for value is holder in due course. *Allen-Wright Furniture Co. v. Spoor*, — Ida. —, 195 Pac. 632.

Note negotiable although containing provision for collection of all upon failure to pay interest for 30 days. *Commercial Sav. Bank v. Schaffer*, — Ia. —, 181 N. W. 492.

Unknowningly making draft payable to fictitious payee does not render it payable to bearer under code. *Am. Exp. Co. v. Peoples Sav. Bk.* — Ia. —, 181 N. W. 801.

Law Merchant or common law governs where N. I. L. is silent. *Mechanics' & Farmers' Savings Bank v. Katterjohn*, 137 Ky. 427, 125 S. W. 1071, Ann. Cas. 1912A, 439.

Foreign drawer has right to re-exchange against English acceptor. In *re Gillespie*, 16 Q. B. D. 702, affirmed 18 Q. B. D. 286.

<sup>1a</sup> The following is a complete list of the cases, arranged alphabetically by states, where this section has been construed.

*Idaho*.—*Wright Furn. Co. v. Spoor*, 195 Pac. 632.

*Iowa*.—*Commercial Sav. Bank v. Schaffer*, 181 N. W. 492; *American Exp. Co. v. Peoples Sav. Bank*, 181 N. W. 701.

*Kentucky*.—*Mechanics & Farmer's Sav. Bk. v. Katterjohn* (1910), 137 Ky. 427, 125 S. W. 1071, Ann. Cas. 1912A, 439.

*Louisiana*.—*J. I. Case Threshing Machine Co. v. Bridger* (1913), 133 La. 754, 63 So. 319.

*Missouri*.—*Houston v. Day* (1909), 145 Mo. App. 410.

*New York*.—*Pavstedt v. N. Y. Life Ins. Co.* (1911), 203 N. Y. 91; *Van Orden v. Simpson* (1915), 153 N. Y. Supp. 134.

*Ohio*.—*Richards v. Market Ex. Bk.* (1910), 81 Ohio St. 348, 55 Ohio Law Bull. 20.

*Oregon*.—*First Nat. Bk. of Cottage Grove v. Bk. of Cottage Grove* (1911), 59 Oreg. 388, 117 Pac. 293.

*Pennsylvania*.—*Harvey v. Dimon* (1908), 36 Pa. Super. Ct. 82.

*Rhode Island*.—*Oakdale Mfg. Co. v. Clarke*, 29 R. I. 192, 69 Atl. 681.

*United States*.—*Nichols v. Waukesha Canning Co.* (1912), 195 Fed. 807.

## ARTICLE XVIII.

### NOTES GIVEN FOR A PATENT RIGHT AND FOR A SPECULATIVE CONSIDERATION.

- |   |  |
|---|--|
| § 330. Negotiable instruments given for patent rights. <sup>1</sup> | en for a speculative consideration.                |
| 331. Negotiable instruments given                                   | 332. How negotiable bonds are made non-negotiable. |

<sup>1</sup> Ohio and New York have these provisions.

**§330. Negotiable instruments given for patent rights.** A promissory note or other negotiable instrument, the consideration of which consists wholly or partly of the right to make, use or sell any invention claimed or represented by the vendor at the time of sale to be patented, must contain the words "given for a patent right" prominently and legibly written or printed on the face of such note or instrument above the signature thereto; and such note or instrument in the hands of any purchaser or holder is subject to the same defenses as in the hands of the original holder; but this section does not apply to a negotiable instrument given solely for the purchase price or the use of a patented article.

See text, § 51.

**§ 331. Negotiable instruments for a speculative consideration.** If the consideration of a promissory note or other negotiable instrument consists in whole or in part of the purchase price of any farm product, at a price greater by at least four times than the fair market value of the same product at the time, in the locality, or of the membership and rights in an association, company or combination to produce or sell any farm product at a fictitious rate, or of a contract or bond to purchase or sell any farm product at a price greater by four times than the market value of the same product at the time in the locality, the words, "given for a speculative consideration," or other words clearly showing the nature of the consideration, must be prominently and legibly written or printed on the face of such note or instrument above the signature thereof; and such note

or instrument, in the hands of any purchaser or holder, is subject to the same defenses as in the hands of the original owner or holder.

See text, § 136.

Cross section: Sec. 57.

**§ 332. How negotiable bonds are made non-negotiable.** The owner or holder of any corporate or municipal bond or obligation (except such as are designated to circulate as money, payable to bearer), heretofore or hereafter issued in and payable in this state, but not registered in pursuance of any state law, may make such bond or obligation, or the interest coupon accompanying the same, non-negotiable, by subscribing his name to a statement indorsed thereon, that such bond, obligation or coupon is his property; and thereon the principal sum therein mentioned is payable only to such owner or holder, or his legal representatives or assigns, unless such bond, obligation or coupon be transferred by indorsement in blank, or payable to bearer, or to order, with the addition of the assignor's place of residence.

See text, § 214.

The Kansas, New York and Ohio acts contain this section.

Nebraska has the following section: "Sec. 196. Note given for patent right, how to be written, et cetera:

"A promissory note or other negotiable instrument, the consideration for which consists, in whole or in part, of the right to make, use or vend a patented invention, or an invention claimed to be patented, shall have written or printed prominently and legibly across the face thereof, and above the signature thereto, the words 'Given for a patent right', such instrument in the hands of any purchaser, or holder, shall be subject to the same defenses as it would be in the hands of the original owner or holder; any person who purchases or becomes the holder of a promissory note, or other negotiable instrument, knowing it to have been given for the consideration aforesaid, shall hold the same subject to such defenses although the words 'given for a patent right' are not written or printed upon its face."

## **APPENDIX A.**

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**Tabulated Laws of the States and Territories of the United States as to some features of the laws of Negotiable Instruments.**

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### **TABLE I.**

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**Table showing in what states and territories the Uniform Negotiable Instruments Law has been adopted and in what it has not; showing by states and territories whether or not Days of Grace are allowed on sight, on demand and on time paper; showing the law as to Presentment when instrument matures or falls due on Sunday or a Holiday; and setting out the legal Rate of Interest, the Limit of Interest under Contract and the Penalty for Usury in the various jurisdictions of the United States.**

State.	Is Uniform Neg. Inst. Law in force.				If instrument falls due or matures on Sunday or a Holiday is presentment to be made on preceeding or succeeding business day.	Interest.		Penalty for usury.
	Right paper.	Demand paper.	Time paper.	Days of Grace.		Legal rate.	Limit under contract.	
1. Alabama	Yes	No	No	No	Next succeeding day	8	8	Forfeiture of all interest
2. Alaska	Yes	No	No	Yes	Preceding day	8	12	Forfeiture of debt to school fund
3. Arizona	Yes	No	No	No	Next succeeding day	6	10	Forfeiture of all interest
4. Arkansas	Yes	No	No	No	Next succeeding day	6	10	Forfeiture of contract
5. California	Yes	No	No	No	Next succeeding day	7	12	No penalty
6. Colorado	Yes	No	No	No	Next succeeding day	8	12	No penalty
7. Connecticut	Yes	No	No	No	Next succeeding day	6	12	Forfeiture of principal and interest. Fine and imprisonment
8. Delaware	Yes	No	No	No	Preceding day	6	6	Forfeiture of excessive interest
9. Dist. of Col.	Yes	No	No	No	Next succeeding day	8	8	Forfeiture of all interest
10. Florida	Yes	No	No	No	Next succeeding day	8	10	Forfeiture of all interest
11. Georgia	No	No	No	No	Next succeeding day	7	8	Forfeiture of excessive interest
12. Idaho	Yes	No	No	No	Next succeeding day	7	10	Forfeiture of 10% annually of principal
13. Illinois	Yes	No	No	No	Next succeeding day	5	7	Forfeiture of all interest
14. Indiana	Yes	No	No	No	Next succeeding day	6	8	Forfeiture of all interest over 6%
15. Iowa	Yes	No	No	No	Next succeeding day	6	8	Forfeiture of interest and costs of suit
16. Kansas	Yes	No	No	No	Next succeeding day	6	10	Forfeiture of double the usury
17. Kentucky	Yes	No	No	No	Next succeeding day	6	6	Forfeiture of excessive interest
18. Louisiana	Yes	No	No	No	Next succeeding day	5	8	Forfeiture of all interest
19. Maine	Yes	Yes	No	No	Next succeeding day	6	No limit	No usury law except as to loans for less than \$200 secured by chattel mortgage
20. Maryland	Yes	No	No	No	Next succeeding day	6	6	Forfeiture of excessive interest
21. Massachusetts	Yes	Yes	No	No	Next succeeding day	6	No limit	On loans of less than \$1,000 only 18% is recoverable. Not more than \$5.00 costs
22. Michigan	Yes	No	No	No	Next succeeding day	5	7	Forfeiture of all interest
23. Minnesota	Yes	No	No	No	Next succeeding day	6	10	Forfeiture of debt and interest
24. Mississippi	Yes	No	No	No	Preceding day	6	8	Forfeiture of interest
25. Missouri	Yes	No	No	No	Next succeeding day	6	8	Forfeiture of excessive interest

State.	Is Uniform Neg. Inst. Law in force.		Days of Grace.			If instrument falls due or matures on Sunday or a Holiday is presentment to be made on preceding or succeeding business day.	Interest.		Penalty for usury.
			Sight paper.	Demand paper.	Time paper.		Legal rate	Limit under contract.	
26. Montana	Yes	No	No	No	No	Next succeeding day	8	10	Forfeiture of all interest
27. Nebraska	Yes	No	No	No	No	Next succeeding day	7	10	Forfeiture of all interest
28. Nevada	Yes	No	No	No	No	Next succeeding day	7	12	No penalty
29. N. Hampshire	Yes	No	No	No	No	Next succeeding day	6	6	Forfeiture of three times excess of interest
30. New Jersey	Yes	No	No	No	No	Next succeeding day	6	6	Forfeiture of all interest
31. New Mexico	Yes	No	No	No	No	Next succeeding day	6	12	Forfeiture double the usury fine
32. New York	Yes	No	No	No	No	Next succeeding day	6	6	Forfeiture of debt and interest. Misdemeanor
33. N. Carolina	Yes	*	No	No	No	Next succeeding day	6	6	Forfeiture of all interest. Double amount paid may be recovered
34. N. Dakota	Yes	No	No	No	No	Next succeeding day	6	10	Forfeiture of all interest
35. Ohio	Yes	No	No	No	No	Next succeeding day	6	8	Forfeiture of excess over 6%
36. Oklahoma	Yes	No	No	No	No	Next succeeding day	8	10	Forfeiture of double interest
37. Oregon	Yes	No	No	No	No	Next succeeding day	6	10	Forfeiture of principal and interest
38. Pennsylvania	Yes	No	No	No	No	Next succeeding day	6	6	Forfeiture of excess interest
39. Rhode Island	Yes	Yes	No	No	No	Next succeeding day	6	No limit	Forfeiture of contract
40. S. Carolina	Yes	No	No	No	No	Next succeeding day	7	8	Forfeiture of interest. Twice amount of interest paid may be recovered by debtor
41. S. Dakota	Yes	No	No	No	No	Next succeeding day	7	12	Forfeiture of interest. Misdemeanor
42. Tennessee	Yes	No	No	No	No	Next succeeding day	6	6	Forfeiture of excess interest
43. Texas	Yes	No	No	No	No	Preceding day	6	10	Forfeiture of all interest. Double amount of interest paid recoverable
44. Utah	Yes	No	No	No	No	Next succeeding day	8	12	Forfeiture of principle and interest
45. Vermont	Yes	No	No	No	No	Next succeeding day	6	6	Forfeiture of excess interest
46. Virginia	Yes	No	No	No	No	Next succeeding day	6	6	Forfeiture of all interest
47. Washington	Yes	No	No	No	No	Next succeeding day	6	12	Forfeiture of accrued interest. Twice amount paid recoverable
48. West Virginia	Yes	No	No	No	No	Next succeeding day	6	6	Forfeiture of excess interest
49. Wisconsin	Yes	No	No	No	No	Next succeeding day	6	10	Forfeiture of all interest. Treble paid recoverable.
50. Wyoming	Yes	No	No	No	No	Next succeeding day	8	12	Forfeiture of all interest

\*Yes if stipulated, but no if not.



**TABLE II.**

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Table showing by states and territories the period of the Statute of Limitations on Notes and also on Judgments in Courts of Record; showing whether or not Agreements to Pay Attorney's Fees in case of Default are Enforcible and whether or not such agreements render notes non-negotiable; showing also whether or not Judgment Notes are used; setting out whether the Contracts of a Married Woman in business are enforcible at law as they would be if she were unmarried; and also setting out the Jurisdiction of Justices of the Peace as to Amount on Negotiable Instruments.

States.	Statute of Limitations.		Is an agreement to pay attorney fees in case of default enforceable?	Does such an agreement render the note non-negotiable?	Are the contracts of a married woman in business enforceable at law as they would be if she were unmarried?	Jurisdiction of Justice of the Peace as to amount.
	Notes. (Years.)	Judgments. (Courts of record.)				
1. Alabama	6; 10 if under seal	20	Yes	No	Yes	\$100.00
2. Alaska	6; 10 if under seal	10	.....	.....	Yes	\$1,000.00
3. Arizona	6	5	Yes	No	Yes, but wife cannot dispose of common property	\$300.00 and interest
4. Arkansas	5	10; lien expires 3 yrs.	No	No	Yes	\$300.00 and interest
5. California	3; 4 if executed in state	5	Yes	No	Yes, with restrictions as to engaging in business	\$300.00 and interest
6. Colorado	6	20	Yes	No	Yes	\$300.00
7. Connecticut	6; non-negotiable 17	No limit	Yes	No	Yes, if for the benefit of herself, her family or her sole debts	\$100.00
8. Delaware	6	10	Yes, if sum is certain	No	Yes	\$300.00 and interest
9. District of Col.	3	13	Yes	No	Yes	\$500.00
10. Florida	5	20	Yes, if debt is given 10 days' notice of intention to sue	No	Yes, upon leave being granted by the Circuit Court her separate property liable in equity	\$100.00
11. Georgia	6; if under seal 30	7; foreign, 5 yrs.	Yes	No	Yes, but cannot be held liable as surety or for debts of husband	\$100.00 and interest
12. Idaho	5	6	Yes	No	Yes	\$300.00
13. Illinois	10	10; foreign, 5 years.	Yes, if fees are fixed and certain	No, if amount is fixed	Yes, but cannot enter partnership without her husband's consent	\$300.00. No. J. P. in Chicago. Attended by Court \$100.00
14. Indiana	10	20; but no lien after 10	Yes, if unconditional	No	Yes, but cannot become surety for anyone. Husband must join in conveyances and mortgages	\$300.00. By confession \$300.00
15. Iowa	10	20	Yes, if attorney files statutory affidavit	No	Yes	\$100.00
16. Kansas	5	May be kept alive by landing execution every 5 yrs.	Yes	No	Yes	\$500.00

States.	Statute of Limitations.		Is an agreement to pay attorney's fees in case of default enforceable?	Does such an agreement render the note non-negotiable?	Are the contracts of a married woman in business enforceable at law as they would be if she were unmarried?	Jurisdiction of Justice of the Peace as to amount.
	Notes (years.)	Judgments (Courts of record.)				
17. Kentucky	15; notes 5; acceptances 5	15	No; enforceable if valid in state where made	No	Yes	\$100.00 and interest
18. Louisiana	5	10	Yes	No	Yes	\$100.00
19. Maine	6; if notes are witnessed, 20	20	No	Yes	Yes, except in some partnership contracts	\$20.00
20. Maryland	3; 12, if sealed	12	Yes	No	Yes	\$100.00
21. Massachusetts	6; attested note 20	20	Yes	No	Yes, but statute does not authorize contracts between husband and wife	\$300.00
22. Michigan	6; under seal, 10	10	Yes	No	Yes, but cannot become surety for or form partnership with her husband	\$100.00 concurrent to \$300.00
23. Minnesota	6	10	Yes	No	Yes, husband must join in the conveyance of real property	\$100.00
24. Mississippi	6	7	Yes	No	Yes	\$200.00 and interest
25. Missouri	10	10; if dated prior to 1895, 20	Yes	No	Yes	\$300.00
26. Montana	5	10	Yes	No	Yes	\$300.00
27. Nebraska	5	10; foreign, 5	No	No	Yes	\$300.00
28. Nevada	6	6	Yes	No	Yes	\$300.00 and interest
29. N. Hampshire	6; secured by mortgage, 20	20	Yes	No	Yes, but she cannot become surety for her husband	\$12,323
30. New Jersey	6	20	Yes	No	Yes, but cannot become surety, accommodation indorser, or guarantor; times and her estate derives benefit from the contract	\$300.00
31. New Mexico	6	7	Yes	No	Yes, husband must join in the transfer of real estate	\$300.00
32. New York	6; under seal, 20	20	Yes	No	Yes	\$300.00
33. North Carolina	3; under seal, 10	10	No	No	Yes, if made a free dealer	\$200.00 and interest

State.	Statute of Limitations.		Is an agreement to pay attorney's fees in case of default enforceable?	Does such an agreement render the note non-negotiable?	Are the contracts of a married woman in business enforceable at law as they would be if she were unmarried?	Jurisdiction of the courts of the State as to amount.
	Notes. (years.)	Judgments. (Courts of record.)				
34. North Dakota	6	10 5 yr. lien kept alive indefinitely by execution every 5 yrs and may be revived by action within 21 years. 5; may be renewed every 5 yr.	No	No	Yes	\$300.00
35. Ohio	15		No	No	Yes	\$300.00
36. Oklahoma	5		Yes	Yes	Yes	\$300.00
37. Oregon	6	10	Yes, if reasonable fee is provided; no, if specific % is mentioned	No	Yes	\$250.00
38. Pennsylvania	6	20	Yes	No	Yes, but she cannot become surety	\$300.00 and interest
39. Rhode Island	6	20	Yes	No	Yes, bail, endorser or grantor	
40. South Carolina	6	10	Yes	No	Yes	\$100.00
41. South Dakota	6; under seal, 20	20; foreign, 10	No	No	Yes, but she cannot become surety, grantor or partner	\$100.00
42. Tennessee	6	10	Yes	No	Yes	\$1,000 against maker and indorser if demand and notice waived, otherwise \$500.00
43. Texas	4	10	Yes	No	No	\$500.00
44. Utah	6	5	Yes	No	Yes	\$200.00
45. Vermont	6; on witnessed note, 14	5	Yes	No	Yes, but cannot be surety for her husband	\$200.00
46. Virginia	5; under seal, 10	20; if execution issued and returned foreign, 10 yrs.	No	No	Yes	\$300.00
47. Washington	6	6	Yes, for a reasonable fee	No	Yes, but she cannot become partner with her husband	\$100.00
48. West Virginia	10	10	No	No	Yes	\$300.00 and interest
49. Wisconsin	6; under seal, 20 if executed in state	20 yrs. foreign, 10	Yes	No	Yes	\$300.00 and confes. up to \$300.00
50. Wyoming	10	5	Yes	No	Yes	\$200.00

## **APPENDIX B.**

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**Digest of Law in Georgia where Negotiable Instruments Law not adopted.**

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Below is given a brief digest of some of the requirements as to negotiable instruments in the State of Georgia which is the only state where the Negotiable Instruments Law has not been adopted. The citations to statutes are to sections of Park's Annotated Code of 1914.

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A promissory note is a written promise made by one or more to pay to another, or order, or bearer, a specified amount of money, or other article of value. If the payment is in articles other than money, and is not punctually made, the holder may recover to value of such articles at the time the note was due, at the place where it was payable, if a specified place is mentioned, or at the place where it was made, with lawful interest. Sec. 4270.

Days of grace are abolished as to all notes dated on or after October 1, 1913. Sec. 4272.

Promissory notes are negotiable by indorsement if payable to order, or by transfer if payable to bearer, but the maker may restrain negotiability. Sec. 4273.

No indorsement need be under seal. , Sec. 4274.

Indorser's liability may be limited by express provision. Sec. 4275.

Transfer of notes secured by mortgage transfers mortgage benefit. Sec. 4276.

Transferrer warrants that he is lawful holder, and has a right to sell and that instrument is genuine and that he has no knowledge that instrument is worthless. Sec. 4277.

Acceptances may be conditioned or payable from designated funds, and the acceptor has lien on drawer's funds or property held by him. Sec. 4278.

Indorsers are liable if original parties do not pay. Sec. 4279.

Notice of non-payment and protest must be given to indorsers within reasonable time but it shall not be necessary to protest in order to bind indorsers, except in the following cases: 1. When a paper is made payable on its face at a bank or banker's office. 2. When it is discounted at a bank or banker's office. 3. When it is left at a bank or banker's office for collection. Sec. 4280.

Five per cent on principal may be collected as damages on protested note payable out of the state and within United States and ten per cent if without the limits of United States. Sec. 4281-2.

Indorsers may be sued in same action with the maker, drawer or acceptor. Sec. 4283.

All bills, checks, notes and other evidences of debt maturing or by their terms presentable for acceptance or payment on Sunday or a public holiday, shall be due or presented on the next business day thereafter. Sec. 4285.

Bona fide holder for value of negotiable instrument who receives same before due and without notice of defect or defense is protected from all defenses by maker except, *non est factum*, gambling, immoral and illegal consideration or fraud in its procurement. Sec. 4286.

Holder receiving negotiable instrument after due is charged with notice of dishonor and takes subject to equities of original parties. Sec. 4287.

Holder is presumed to be bona fide and for value, but if either fact is negated by proof all defenses are opened. Sec. 4288.

Note held as collateral for debt is held as by purchaser. Sec. 4289.

Holder's title cannot be inquired into unless for defendant's protection. Sec. 4290.

Circumstances which would place a prudent man upon his guard in purchasing negotiable paper are sufficient notice before due. Dec. 4291.

Negotiable instruments payable upon demand are due immediately, but where time for payment not fixed they are due as soon as presented and accepted. Sec. 4292

All promissory notes, contracts or other evidences of debt, taken by any person, agent, company or corporation, for the purchase price of any patent, copy, or property, right or territory for the sale of any such right, or for the sale of any patented or copyrighted article or thing, or where there is a proprietary ownership or right, sold through or by any peddler, agent or traveling salesman, traveling for the purpose of making such sales, shall have expressed on the face of such note, contract or other evidence of debt the consideration of the same, stating the thing or article for which given, and such consideration so expressed shall entitle maker to all equities between original parties as against any holder. This does not apply to merchants or manufacturers selling and delivering directly from their stores. Secs. 4293 and 4294.

All promissory notes, contracts, or other evidences of debt, taken by any person, company or corporation, agent or promoter for the purchase price of any gold or silver mining, oil well or insurance stock, or any other stock in any incorporated company, domestic or foreign and sold by any peddler, agent or traveling salesman or promoter, traveling for the purpose of making sales, shall have expressed on the face of same the consideration, stating for what same was given, and such consideration so expressed shall be notice to all holders and entitle maker to all defenses. This does not apply to sales after the original purchase price has been paid and certificates of stock have been issued. Secs. 4294a and 4294b.

Obligations to pay attorney's fees are void and not enforceable unless the debtor shall fail to pay such debt on or before the return day of the court to which suit is brought for collection of same; provided the holder of the obligation sued upon, his agent or attorney notifies the defendant in writing ten days before suit of his intention to sue and the term of court to which it will be brought. Sec. 4252.

Certification of any check, draft, or order upon the bank is made a misdemeanor unless the drawer has the funds in bank and renders the check, draft or order a valid obligation against the bank. Sec. 2301.

All liquidated demands, where by agreement or otherwise, the sum to be paid is fixed or certain, bear interest from the time the party is liable and bound to pay them; if payable on demand, from the time of the demand. In case of promissory notes payable on demand the law presumes a demand instantly and gives interest from date. Sec. 3434.

The reserving, charging or taking of a rate of interest greater than eight per centum per annum, either directly or indirectly, by way of commission for advances, discount, exchange or by any contract, contrivance or device whatever is unlawful and the excess is forfeited. Secs. 3436, 3438.

All actions upon promissory notes, bills of exchange or other simple contracts in writing shall be brought within six years after the same become due and payable. Sec. 4361.

All notarial acts may be proved by notary's certificate under hand and seal providing it is filed in the court at its first term, and permitted there to remain until the trial. Sec. 5822.

Written acceptance of draft will be treated as an assignment pro tanto of funds of the drawer in the hands of acceptor. Sec. 3654.

An accommodation indorser is considered merely as a surety. Sec. 3541.

A guaranty or an accommodation indorsement is not within legitimate business of ordinary partnerships. Sec. 3541.

In Georgia there are decisions holding an irregular or anomalous indorser to be an indorser;<sup>1</sup> prima facie a second indorser;<sup>2</sup> maker;<sup>3</sup> and surety.<sup>4</sup> The reason for this conflict is that the intent governs and parol evidence is admissible to show the intent of the parties in the irregular indorsement.<sup>5</sup>

Blank indorsements of negotiable paper may always be explained between the parties themselves, or those taking, with notice of dishonor, or of the actual facts of such indorsements.<sup>6</sup>

Signing by the drawee across the face of a draft without the word "accepted" is a good acceptance.<sup>8</sup>

<sup>1</sup> Collins v. Everett, 4 Ga. 266.

<sup>2</sup> Neal v. Wilson, 79 Ga. 736, 5 S. E. 54.

<sup>3</sup> Hardy v. White, 60 Ga. 454; Quinn v. Sterne, 26 Ga. 223; 71 Am. Dec. 204.

<sup>4</sup> Rixley v. Hightower, 112 Ga. 476, 37 S. E. 733; Eppens v. Forbes, 82 Ga. 748, 9 S. E. 723; Camp v. Simmons, 62 Ga. 73 (unless indorsed by payee).

<sup>5</sup> Neal v. Wilson, 79 Ga. 736, 5 S. E. 54; Hardy v. White, 60 Ga. 454.

<sup>6</sup> Lynch v. Goldsmith, 64 Ga. 62; can be explained.



In case a blank has been filled in with an amount greater than that authorized by the maker, a holder who knew that the authorized limit had been exceeded may recover from the maker the amount actually authorized, the note being void as to the excess only.<sup>7</sup>

<sup>7</sup> *Cower v. Wynn*, 59 Ga. 246; *Moody v. Threlkeld*, 13 Ga. 55, bona fide purchaser protected.

<sup>8</sup> Such complied with the statute. *Fowler v. Gate City Natl. Bank*, 88 Ga. 29, 13 S. E. 831.

# INDEX

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[REFERENCES ARE TO PAGES.]

## ABBREVIATIONS—

use of 52, 660.

## ABSCONDING—

as excuse for presentment, 100, 660.

of drawee, effect on presentment for acceptance, 100, 660.

## ABSENCE—

effect on notice of dishonor, 199, 604.

from home of maker or acceptor, as excuse for non-presentment, etc., 189.

of consideration, 81, 179, 444, 446.

of words implying power to negotiate, 119.

## ABSOLUTE INDORSEMENT, 117.

## ACCELERATION PROVISIONS, purchaser after event which accelerates, 386, 489. (See Chattel Note; Collateral Securities; Installments; Time, Certainty of.)

## ACCEPTANCE, see also ACCEPTANCE FOR HONOR; ACCEPTANCE SUPRA PROTEST; ACCEPTOR; ACCEPTOR SUPRA PROTEST; BILLS OF EXCHANGE; PRESENTMENT FOR ACCEPTANCE; TRADE ACCEPTANCES.

absolute and conditional acceptances, 92, 654.

after maturity or dishonor, 101.

antecedent promise of, 90, 94.

applies only to bills of exchange, 86.

before completion of bill, 88.

by destruction or detention of bill, 96.

by one of a partnership, 98.

by part of drawees, 92, 98.

by refusal to return bill, 96.

by separate instrument, 93, 649.

by stranger to instrument, 101.

by telegram, 89, 94.

by what law governed, 88.

certification check equals, 239, 684, 687.

certification equivalent to, 239, 684, 687.

classification of acceptances, 92.

collateral or virtual, 649, 650.

completed by delivery, 91.

conditional, 654, 655.

conformity with terms of bill, 90.

consideration, 427, 428.

## [REFERENCES ARE TO PAGES.]

## ACCEPTANCE—continued—

- conditional promise to accept, 93, 650.
- date of, 100.
- dates from delivery, and until then is revocable, 91.
- defined, 85, 86, 87, 646, 695.
- definition and effect, 85, 646.
- delivery necessary, 63, 91.
- delivery to notary for protest does not negative, 653.
- destruction of bill, 96, 652.
- detention of bill, 96, 652.
- dishonor by refusal, 91, 660.
- drawee has twenty-four hours within which to accept or refuse, 96, 100, 651.
- drawee not bound until, 86.
- drawee not liable before, 86.
- drawee or his authorized agent may, 99.
- duty and rights of holder, 186, 661.
- effect of delay of mail on presentment, 99.
- effect of, oral promise to accept or pay, 86.
- entry in pass-book, 646.
- express, 87.
- express, what amounts to, 87.
- facts which acceptor admits, or warranties, 141.
- for honor, see ACCEPTANCE FOR HONOR; ACCEPTANCE SUPRA PROTEST.
- form and requisites, 87.
- form of, parol, 95.
- forms of qualified, 654, 655.
- form; words indicating, 93.
- form of, written, 88, 93.
- forms and varieties of, as verbal, written and implied, 88, 92.
- general or qualified, 92, 654.
- holder entitled to, on face of bill, 87, 649.
- how made, on bill, writing required, 87, 649.
- immaterial departures from tenor of bill, 90.
- implied by retention, 96.
  - from conduct, 96.
  - what will amount to, 96.
- in what name, 87.
- is new contract, 90.
- kinds of, 92, 654.
- law governing, 95.
- liability for retention or destruction, 96, 652.
- liability of acceptor, 89.
- liability of drawer before and after, 89.
- local, 92, 655.
- may be by telegram, 89.
- may be made after dishonor, 91.
- may be on separate paper, 93, 649.
- may be required in writing, to be on bill, 87, 649.
- may be revoked before delivery, 97.
- meaning of term, 85, 646.
- must be in accordance with tenor of bill, 87.

## [REFERENCES ARE TO PAGES.]

## ACCEPTANCE—continued—

- must be in writing, 87, 646.
- must be pleaded to be in writing, 87.
- must be signed, 87, 646.
- must be for payment in money, 87, 646.
- nature and effect of, 89.
- necessity for delivery of acceptance, 91.
- new contract, 90.
- notice on nonpayment by acceptor *supra* protest, 103.
- off bill of exchange on paper, other than the bill itself, 93, 649.
- of bills drawn in set, 97.
- of check, by banker, 234.
- of foreign bills drawn in sets, 76, 674.
- of incomplete bill, 91, 653.
- of incomplete or dishonored or overdue bill, 91, 654.
- on paper, other than the bill itself, 93, 649.
- only by drawee, 85.
- only necessary with bills of exchange, 86.
- oral, good at common law, 86.
- parol, 86, 92, 95.
- parol promise to accept, 87, 95.
- partial, 92, 654.
- place of presentment for, 100.
- presentment for, see PRESENTMENT FOR ACCEPTANCE.
  - by whom made, 98, 184, 658.
  - of bill of exchange, how made, 98, 658.
  - of bill of exchange, when excused, 100, 660.
  - of bills in a set, 70, 674.
  - of non-existing bill, 93, 94.
  - on part holiday of bill of exchange, 99, 186, 658, 659.
  - on Saturday of bill of exchange, 99, 186, 658, 659.
  - time when made, 99, 651, 658.
  - to dead drawee of bill of exchange, how made, 98, 658.
  - to insolvent or bankrupt drawee, 98, 658.
  - to partners, of bill of exchange, 98.
  - to whom made, 98.
  - when must be made, 97, 185, 657.
  - when may be made, 97, 185, 657.
  - when time is sufficient, 99.
  - when excused, 100, 660.
- presumption that acceptor has funds of drawer, 87.
- promise to accept must be unconditional, 93, 650.
- promise to accept, 94, 650.
- promise to accept equivalent to, 94, 650.
- qualified, 91, 92, 654.
- qualified, bill of exchange, when holder may refuse, 90, 655.
- qualified, of bill of exchange, effect of, 91, 655.
- qualified, releases drawers and indorsers unless they assent to, 91, 655.
- qualified, rights of parties, 91.
- qualified, what constitutes, 654.
- refusal of, duty of holder, 186, 661.

## [REFERENCES ARE TO PAGES.]

## ACCEPTANCE—continued—

- refusal of, rights of holder, 186, 661.
- refused, notice of nonpayment not required, 203.
- relation of drawee to bill before and after, 86.
- rights of drawer and drawee after, 87.
- rights of parties as to, 87.
- signature of drawee sufficient, 88.
- terms of, general acceptance, 87.
- terms of qualified, 90, 92.
- time allowed for, 96, 651.
- time in which it may be made, 99, 651.
- time of acceptance, presumption as to, 651.
- to pay at a particular place, 92.
- undertaking by drawer, that drawee has capacity to accept, 140.
- varieties of, 91.
- verbal, 88.
- what acceptance admits, 141.
- what acceptance does not admit, 141.
- what bills do and do not require, 86.
- what bills must be protested for nonacceptance, 210, 662.
- what bills presented for, 97, 185, 657.
- when acceptance may be made, 91, 653.
- when acceptance on separate instrument binds acceptor, 93.
- when date may be inserted, 402.
- when implied, 96, 652.
- when overdue, 52, 654.
- when retention of bill amounts to acceptance, 96, 652.
- when presentment for, must be made, 97, 185, 657.
- where drawees are joint parties or partners, 92, 98.
- whether delivery necessary to complete, 63, 91.
- whether bound without presentment, 193.
- while bill is incomplete, 91.
- while incomplete, overdue, or dishonored, 91, 654.
- who may accept, 98, 101, 658.
- writing and signature, 87, 649.
- written acceptance, must be pleaded, 87.

ACCEPTANCE FOR HONOR, *see* ACCEPTANCE; ACCEPTANCE SUPRA

## PROTEST—

- agreement of acceptor for honor, 102, 668.
- delay in presentment, when excused, 103, 669.
- for whom made, 100, 667.
- for part of sum, 100, 667.
- for different parties, 100, 667.
- how made, 100, 103, 667.
- how presentment for payment made to acceptor for honor, 102, 669.
- in general, 100, 667.
- liability of acceptor for honor, 100, 668.
- maturity of bill payable after sight, accepted for honor, 103, 669.
- presentment for payment, 102.
- protest of bill, accepted for honor, 103, 669.
- protest of bill, dishonored by acceptor, 100, 670.
- when deemed to be for drawer, 100, 668.

## [REFERENCES ARE TO PAGES.]

## ACCEPTANCE FOR HONOR—continued—

when may be made,—when, by whom and for what sum may be made, 100, 667.

when acceptance does not state for whose honor, 100.

## ACCEPTANCE SUPRA PROTEST, see ACCEPTANCE FOR HONOR—

when overdue, 101.

## ACCEPTED—

written across face of bill, 87, 649.

## ACCEPTOR—

admits authority to draw, 141, 541.

admits drawee's capacity to draw, 141, 541.

admits genuineness of drawee's signature, 141, 541.

admits capacity of corporation to draw bill, 141, 541.

admits capacity of payee to endorse, 141, 541.

by acceptance become principal debtor, 89, 90.

charged without presentment, 563, 564.

contract of, 141, 541.

estopped to deny insane payee's capacity, 30, 31.

failure of consideration between him and drawer no defense against holder, 446.

liable to indorsee of insane payee, 31.

liability of, 541-543.

liability if drunk, 31, 32.

liability on bills drawn in set, 141, 541.

may not set up forgery, 169.

may not show that drawer is a lunatic, 31.

nature of contract entered into by, 141, 541.

negligence in facilitating alteration, 178.

of bills in a set, 141, 541.

possession by, presumption of payment, 224.

subject to law of the place of acceptance, 230.

*supra* protest, liability of, 101, 102, 103.

must be made in writing, 101, 102.

presentment to drawee at maturity, 101, 102.

when bankrupt, protest made for better security, 211, 212.

## ACCEPTOR FOR HONOR, see also ACCEPTOR AND ACCEPTOR SUPRA PROTEST.

agreement of, effect, 102.

how made, 103.

liability of, 100.

nature of his agreement, 102.

notice on nonpayment by acceptor *supra* protest, 103.

presentment to acceptor *supra* protest, 103.

presentment to drawee at maturity, 103.

presentment to, for payment, how made, 103.

protest on nonpayment by drawee, 103.

steps necessary to consummate liability of, 103.

steps necessary to render liable, 103.

who may be, 101.

## ACCEPTOR SUPRA PROTEST, see ACCEPTANCE FOR HONOR.

## [REFERENCES ARE TO PAGES.]

**ACCIDENT—**

- as excuse for nonpresentment, etc., 202, 203.
- effect of, 202, 203.
- parol evidence as to, 45.
- persons accommodated, 83, 84, 145.
- presentment for payment to, 189, 190.
- revocable until negotiated, 83, 84.
- successive, order in which liable, 147.
- to agent, 202, 203.
- unauthorized diversion, 145, 146.
- when credit given for a special purpose, 145.

**ACCOMMODATION, see also ACCOMMODATION PARTY; ACCOMMODATION PAPER.**

- burden of proof, 448, 449, 450.
- payment by an accommodation party a discharge, 216, 217.
- signature to satisfy demand for additional collateral consideration for, 433.
- what is parol evidence admissible to show, 450.

**ACCOMMODATION INDORSEMENT, see also ACCOMMODATION; ACCOMMODATED PARTY; ACCOMMODATION PAPER—**

- by bank, 145 note.
- irregular accommodation, 123, 124.
- liability of, 145, 448.
- lunatic, 31.
- presentment for payment, to, 189, 190.

**ACCOMMODATION INDORSER—**

- entitled to notice of dishonor, 587.
- liability if irregular or anomalous, 544, 545.
- negligence in facilitating alterations, 633.
- remedies against accommodated maker, 448, 449, 450.
- when may retract indorsement, 84.
- whether personally liable, 83.

**ACCOMMODATION INDORSERS—**

- discharge of 618, 619.
- notice of dishonor inter se, 603.
- notice of dishonor necessary, 587.

**ACCOMMODATIVE MAKER, see ACCOMMODATION PARTY.****ACCOMMODATION PAPER, see also ACCOMMODATION; ACCOMMODATION PARTY.**

- concealed sureties, 272, 273.
- consideration for, 83, 146.
- corporation can not make or indorse, 147.
- definition of, 83.
- discounted at a different bank, 146.
- effect of, 83.
- effect of extension of time, on parties, 146, 147.
- effect of payment by a co-maker, 216.
- executed by member of firm, 147.
- indorser of, entitled to notice of dishonor, 147.
- issued by corporations, 147.

[REFERENCES ARE TO PAGES.]

**ACCOMMODATION PAPER**—continued—

- issued by one partner without consent of all, 39, 147.
- liabilities and rights of parties, to, 145.
- liability of, 83, 145, 146, 147.
- making by partner, 39, 147.
- matters as to, 433, 435.
- notice of accommodation character, effect of, 83, 145, 146.
- nature and object, 83, 146.
- notes mutually exchanged are not, 84.
- notice of, effect of, 83, 145.
- of corporation, 147.
- overdue accommodation papers, 83, 146, 147.
- partners, 147.
- power of corporation to issue, 147.
- parties to, who are, 83, 145.
- partnership liability, 39, 147.
- release of, 146.
- what constitutes, 83.
- when accommodation paper has inception, as against defense of usury, 83.

**ACCOMMODATION PARTY**, see also **ACCOMMODATION**; **ACCOMMODATION INDORSEMENT**; **ACCOMMODATION PAPER**—

- accommodation maker is primarily liable, 145.
- corporation has no power to become, 147.
- defined, 145, 448.
- discharge of, 618, 619.
- discharge of by diversion of instrument, 146.
- knowledge of, no defense, 145.
- lends his credit only for time specified, 146.
- liability of, 145, 448, 451.
- may rescind bill before negotiation, 145.
- not entitled to notice, 201.
- not entitled to presentment, 188, 189.
- partner indorsing for accommodation, 147.
- payment by accommodated party a discharge, 145, 215, 615.
- payment by accommodation party, 216, 217.
- payment by accommodation acceptor or maker a discharge, 216, 217.

**ACCORD AND SATISFACTION**, 221, 222.

**ACCRUAL OF ACTION**, 450, 563.

**ACTION**, see **ACTIONS ON NEGOTIABLE INSTRUMENTS**.

**ACTIONS ON NEGOTIABLE INSTRUMENTS**—

- acceptor for honor may sue, 295.
- agent may sue, 293.
- agent may sue in own name when, 296.
- all parties sued in one action, 300.
- anomalous indorser's action not on note, 299.
- assignees may sue, 293.
- by executor of holder, 293.
- by restrictive indorsee, 298.
- corporation may sue on instrument made to its officer, 297.
- defined, 345, 695.



[REFERENCES ARE TO PAGES.]

## ACTIONS ON NEGOTIABLE INSTRUMENTS—continued—

- delivery constitutes transferee proper plaintiff, 295.
- donee may sue, 293.
- drawee may sue, 295.
- drawer may sue acceptor, 295.
- effect of transfer upon pending action, 299.
- form of action governed by *lex fori*, 227.
- heirs or personal representative may sue, 293.
- holder for collection may sue, when, 297.
- holder may elect to sue one or all, 300.
- holder may sue in own name, 292.
- holder may sue in own name and strike out subsequent indorsements, 294.
- holder of as collateral may sue, 293.
- holder of legal title may sue, 292.
- joint indorsers sued jointly, 301.
- maker and guarantor not to be joined in suit, 300.
- maker and surety may be joined as defendants, 300.
- maker sued in fictitious or real name, 301.
- not more than one suit at each term on same instrument, 301.
- on instruments indorsed in blank, 294.
- on instruments payable to bearer, 294.
- on instruments payable to public officials, 297.
- original payee or indorsee can maintain suit, 294.
- original holder or payee may sue when, 294.
- parties defendant, 300.
- partners must all join in suit, 299.
- party in interest may sue, 292.
- payee may strike out his own and subsequent indorsements, 295.
- payee may sue, 295.
- possessor may sue, 294.
- public officers as plaintiffs on instruments made in representative capacities, 297.
- real party in interest, 293.
- receivers may sue, 293.
- restrictive indorsement gives right to sue, 298.
- right to bring, 295.
- right to sue cannot be rebutted except, 295.
- separate actions against each party may be had, 301.
- suit against persons severally and immediately liable, 301.
- suit by holder for collection, 293.
- suit by payee who is a trustee, 296.
- suit on indorsement to fictitious payee, 295.
- suit upon note payable to one of several makers, 299.
- suit when instrument to party in wrong name, 295.
- suit where indorsement is special, 299.
- trustees may sue, 293.
- who may be joined as defendants, 302.
- who may be sued, 300.
- who may sue, in general, 292, 293.
- when party in neither actual or constructive possession, 298.

## [REFERENCES ARE TO PAGES.]

**ACTIONS ON NEGOTIABLE INSTRUMENTS—continued—**

when prior party may sue subsequent one, 299.

where instrument to officer without naming corporation, 297.

**ADDITIONAL PROVISIONS—**

address, notice as to correct, 601.

not affecting negotiability, 56, 57, 388.

**ADMINISTRATORS. see also EXECUTORS—**

as indorser of note, 34.

as maker of note, 34.

presentment and notice to, 573, 596, 658.

situs for purposes of appointing, 227 note.

**ADMISSIBILITY—**

of contemporaneous written agreements, 45.

verbal agreements, 45.

**ADMISSIONS—**

as to transfer, 340.

by acceptance, see **ACCEPTANCE**.

by drawer, see **DRAWER**.

by indorser, see **INDORSER**.

by maker, see **MAKER**.

effect of, to change burden of proof, 331.

evidence, 331.

in general, 331.

of acceptor for honor, see **ACCEPTOR**.

**AFTER DATE—**

happening of specified event, maturity of instrument payable at a fixed period, 190, 582.

maturity of instrument payable at a fixed period, 190, 582.

**AFTER SIGHT—**

maturity of instrument payable at fixed period, 190, 582.

maturity of, when accepted for honor, 101, 102, 103, 669.

meaning of, in bills and notes, 52, 392.

**AGENCY—**

how established, 35, 36, 37, 38, 416.

how authority established, 37, 416.

revocation without notice, 37.

**AGENT, see also PRINCIPAL AND AGENT.**

acquisition by maker as agent for another, 616.

agency must be disclosed, 36.

as parties to negotiable instruments, 36, 37, 38.

as to filling blanks, 67, 68.

authority "by procuration," 37, 421.

authority to certify post-dated checks, 684.

authority of, how created, 37, 38.

authorized in writing to sign, 37.

banks as collecting agents, 120, 121.

bills and notes, authority to make, 36, 37, 38.

burden of proof as to authority, 423.

by agents of corporations, 38.

cashier or fiscal officer as payee or indorsee, 471.

## [REFERENCES ARE TO PAGES.]

## AGENT—continued—

- competency, 35, 36.
- creating by indorsement, 119, 120, 121.
- delivery through fraud, 175.
- disclosure of name of principal in body of, 36, 37.
- draft by, on principal, effect, 644.
- effect of delivery by, in violation of instructions, 175.
- effect of want of authority on principals, liability rights, 421, 422.
- effect of word "agent" after name, 36.
- execution of instrument by 35, 36, 37, 38, 416.
- express authority of, 37, 416.
- for collection when able to sue, 121.
- for prior owner is subject to same defenses, 523.
- form of agent's indorsement, 36.
- form of appointment, 37.
- form of signature, 35.
- general rules as to, 35, 36, 37, 38.
- illustrations as to signatures, 36.
- implied authority of, 37.
- indorsee made agent of indorser, 120, 463.
- indorsee under restrictive indorsements as, 120, 463.
- indorsement for collection, to, 120, 464.
- indorsement in representative capacity, see **INDORSEMENT**.
- knowledge to agent is knowledge to principal, 154.
- liability of, 36, 147, 417, 561.
- liability of, on negotiation without endorsement, 144, 561.
- liability of party signing as, 36, 37, 38, 147, 417.
- liability of public officers as, 38.
- liability of where signature unauthorized, 148, 422.
- may draw on deposit, when authorized, 249.
- may present for acceptance, 99.
- mere description not sufficient, 37.
- mode of signature, 36, 38.
- negotiation by, 175.
- negotiation by, liabilities of, 144, 561.
- negotiating instrument, liable when, 144, 561.
- notice of dishonor by, 195, 196, 591, 592.
- notice of dishonor given by, 195, 196, 591, 592.
- notice of dishonor to, 197, 595.
- notice of limited authority, 37, 421.
- notice to as affecting principal, 154.
- of a corporation, 40, 41.
- of undisclosed principal, 36, 144, 417.
- one may be shown to be, 142.
- ownership of paper in hands of collecting agent, 121.
- payment by, see **PAYMENT AND DISCHARGE**.
- power to endorse, 37.
- presentment, see **PRESENTMENT**.
- presumption as to authority, 38.
- principal's name on margin, 36, 37.
- public, negotiable instruments by, 38.
- representative capacity, how indicated, 36, 37.

## [REFERENCES ARE TO PAGES.]

**AGENT—continued—**

- revocation of agency, 38.
- rules as to signature by, 418.
- signature by procuration, effect, 36, 37, 48, 421.
- signature of party made by, 36, 147.
- signing by, 36, 416.
- signing by own name alone, 36, 417.
- to collect and apply, 136.
- unauthorized indorsement of, 148, 418, 422.
- undisclosed principal not liable, 36, 144, 417.
- want of authority, warranty of subsequent indorser against, 143, 555.
- when agent individually bound, 36, 144, 417.
- when given by, 36.
- when personally liable, 36, 144, 417.
- whether must be competent to make contract, 35.
- who indorser agent of, 119, 120.
- who may act as, 35, 36, 37.
- words added to signature describing persons as, 36, 37, 417.
- words indicating representative capacity, 36, 37, 417.

**AGREEMENT—**

- between indorsers, evidence admissible to show, 143, 559.
- controlling operation, kinds, 64.
- for extension of time of payment, effect of, on party secondarily liable, 225, 621.
- to renew, 65.

**ALIEN ENEMIES—**

- as parties to commercial paper, 33.
- contract, void, 33.
- in times of peace, 33.
- in times of war, 33.
- paper executed by, during hostilities, 33.
- transfers by, across line of hostilities, 33.
- who are, 33.

**ALLONGE—**

- defined, 110.
- indorsement on, 110.
- indorsement on paper attached to instrument, 110.
- nature and use, 110.

**ALTERATION—**

- adding name of witness, 177.
- addition of accommodating party, 636, 637.
- addition of indorsee's residence, 637.
- addition of, or change in, words of negotiability, 223, 637.
- addition of place of payment, 223, 637.
- addition of revenue stamp, 171, 637.
- affecting negotiability, 223, 631.
- amount, 176.
- apparent, effect of, 633, 634.
- as a defense, 176, 631.
- as to interest, 635, 636.
- authority and consent of parties, 176, 631.

[REFERENCES ARE TO PAGES.]

## ALTERATION—continued—

- bill in equity for relief from, 177.
- blanks, when may be filled, 67, 68, 403, 404.
- burden of proof, 631, 632, 633.
- by agreement of parties, 176, 631.
- by consent of prior parties, 176, 631.
- by consent, 176, 631.
- by inserting legal rate of interest, 403.
- change in consideration, 177.
- change in number or relation of parties, 176, 636.
- change of figures, 236.
- changing amount of principal or interest, 176, 636.
- changing date, and time of payment, 176, 636.
- changing medium of payment, 176, 637.
- changing personality, number, or relations of the parties, 176.
- changing place of payment, 176, 636.
- detaching a memorandum, 178.
- detaching of note from contract, 633.
- discharge of instrument, 223, 631.
- effect of, 178, 223, 631.
- effect of a material, 177, 223, 631.
- effect on original debt, 632, 633.
- filling in blank space, 178, 637.
- fraudulent, 169.
- immaterial, 177, 178, 637.
- immaterial alterations, illustrations, 177, 178, 637.
- indorsement of payment, 631.
- in general, 176, 631, 634, 636.
- in medium of payment, 176, 637.
- innocent, 177, 178, 637.
- innocent, effect, 177, 178, 631, 636.
- insertion of renewal clause, 176, 631, 636.
- interest, 176, 631.
- made by stranger, 177.
- material, examples of, 176, 631, 636.
- material, what are, 176, 631, 636.
- material, what constitutes, 176, 177, 631, 636.
- medium of payment, 176, 637.
- negligence facilitating, 178.
- not, unless rights are affected, 178, 223.
- of amount, 176, 636.
- of check, 241, 242.
- of date, 176, 636.
- of effect of instrument, 176, 631, 636.
- of instrument written in pencil, 178, 631, 636.
- of overdue instrument, 176, 631, 636.
- of parties to instrument, 176, 631, 636.
- of place of payment, 176, 631, 636.
- other changes, 176, 636.
- pleading, 632, 633, 634.
- prejudicial to holder, 632, 633, 634.
- ratification what amounts to, 223.

## [REFERENCES ARE TO PAGES.]

**ALTERATION**—continued—

- rights of bona fide holder of altered instrument, 177, 631.
- rights of holder in due course, 176, 631.
- through negligence of maker, 178.
- what amounts to a material, 176, 177, 631, 636.
- where paper payable to order is made payable to holder, 637.
- when material, 176.
- when material, but innocently made, effect of, 177, 178, 631, 636.

**ALTERNATIVE PARTIES**, 61, 643.**AMBIGUOUS INSTRUMENT**, see **AMBIGUITY**.

- construction of, 413.
- rules of construction, 413.
- where two or more sign in the singular, 413.

**AMBIGUITY**—

- as to signature, 419.
- as to whether instrument is bill or note, 338, 413.
- as to writing and typewriting, 414.
- evidence to explain, 45, 338.
- in instrument, 45, 413.
- of negotiable instruments, rules to govern option of holder to treat as note or bill, 45, 338, 413.
- parol evidence to explain latent, 45.

**AMOUNT**, see also **CERTAIN AS TO AMOUNT**.

- alteration of, 176, 636.
- abbreviations, 52, 660.
- blanks for, 52, 403.
- by installments, 53, 54.
- certainty, 52, 376.
- character, 52.
- discrepancy between words and figures, 52.
- effect of attorney's fees on, 53, 54, 377.
- effect of words "with exchange," 52, 54, 377.
- effect of words "with current exchange on another place," 52, 377.
- interest added, 53, 54, 377.
- of recovery when less than full value paid, 153, 442.
- to be paid must be certain, 52, 376.
- uncertainty as to, 370, 377.
- with costs of collection added, 54, 377.
- written in margin, 52.

**AMOUNT OF RECOVERY**, 153, 442.**ANNE, STATUTE OF**, see **STATUTUE OF ANNE**.**ANOMALOUS INDORSEMENT**, see also **IRREGULAR INDORSEMENT**.

- in general, 109, 124, 137, 548.
- parol evidence as to, 125, 549.

**ANTECEDENT DEBT**—constitutes value, 72, 73, 432.

- as a consideration, 72, 73, 432.
- is valuable consideration, 72, 73, 432.
- whether value if worthless, 72, 73.

**ANTECEDENT PARTIES**—

- time allowed to give notice of dishonor to, 199, 603.

## [REFERENCES ARE TO PAGES.]

**ANTECEDENT PROMISE**, see also **PROMISSORY NOTE AND PURCHASE FOR VALUE WITHOUT NOTICE**.

to accept bill of exchange, 90, 94, 650.  
whether value, 72, 73, 432.

**ANTE-DATED—**

ante-dated, if for illegal purpose, 47, 401.  
instrument not valid because, 47, 401.  
instrument title acquired on delivery, 47, 401.  
provisions as to, 47, 401.

**ANTE-DATING INSTRUMENT**, 46, 47, 401.**APPENDIX A**, 707, 708, 709, 710, 711, 712, 713.**APPENDIX B**, 714, 715, 716, 717, 718.**APPLICATION OF PAYMENTS—**

rights of parties as to, 224, 225, 626, 627.

**APPRAISEMENT LAWS**, 3.**ARGUMENT**, 352.**ASSIGNABILITY—**

distinguished from negotiability, 18, 19.  
notice necessary, 19.  
rules as to, 19.

**ASSIGNEE—**

right of, 134.

**ASSIGNMENT—**

action by assignee, 134.  
as indorsement without recourse, 467.  
assignability distinguished from negotiability, 18, 19, 131.  
assignee takes subject to all equities, 131, 132.  
bill of exchange not an assignment of funds, 87.  
by corporation, 29, 421.  
by corporation or infant, 29, 421.  
by one joint payee to another, 112, 470.  
check does not constitute, 248, 687.  
check is not, 248, 687.  
equitable, 109, 115, 130.  
effect, 18, 19, 131, 132.  
how accomplished, 132, 133.  
in general, 131.  
indorsement by, 131, 132.  
indorsement without recourse equal to an, 134, 467.  
liability of assignor, 133, 137.  
non-negotiable instruments, 19, 131.  
notice of assignment, 19.  
notice to debtor, 19.  
of commercial paper, in general, 19, 131.  
of funds, bill is not, 86.  
of guaranties, 133.  
of non-negotiable instruments, 131.  
on separate instrument, not an indorsement, 132.  
of mortgage, effect on note, 132.  
oral, 133.

[REFERENCES ARE TO PAGES.]

**ASSIGNMENT**—continued—

- right of assignee to sue, 19, 134.
- rights of parties, 134.
- subject to equities between prior parties, 134.
- transfer without indorsement, 18, 19, 131.
- what transferred by, 131, 132.
- whether writing an indorsement or assignment, 131.
- words of, as indorsement, 459.

**ASSIGNMENT FOR CREDITORS**, 598, 658.

**ASSIGNOR**—

- differs from indorser, 133, 134.
- of instrument, liability of, 133, 134.
- warrants genuineness of signatures, 133, 134.
- warrants his title to instrument, 133, 134.

**ASSUMED NAME**—person signing in, 48, 415.

- liability under, 48, 415.
- signature by, 48, 415.

**AT SIGHT**—

- means payable on demand, 52, 392.

**ATTACHMENT**—

- transfer by, 135, 136.

**ATTORNEY'S FEES**—

- amount of, 53, 54, 377.
- conflicting authority, 53, 711, 712, 713.
- effect on negotiability, of stipulation to pay, 53.
- indorsers liability, 377, 378.
- indorsers right to recover, 377, 378.
- in general, 3, 377.
- parol evidence as to, 334.
- proof of in general, 334.
- provision for does not render sum uncertain, 53, 54, 377.
- stipulation does not effect negotiability, 53, 54, 377.
- stipulation in bill or note for payment of, effect, 53, 54, 377, 378.
- validity of provision for, 53, 54, 377, 378.
- when no suit is brought, 377, 378.
- whether agreement renders note non-negotiable, laws tabulated by states, 711, 712, 713.
- whether enforceable, laws tabulated by states, 711, 712, 713.

**AUTHORITY**—

- how shown, 416.
- of one partner to bind firm, 38, 39.
- signature affixed without, 39, 49, 422, 423.
- to sign, to be in in writing when. 37.

**B**

**BAD FAITH**, 154, 340, 341.

**BANK**, 695.

- after certification, 239.
- allowed reasonable time to make credit, 250.



## [REFERENCES ARE TO PAGES.]

**BANK—continued—**

as to giving notice by, 588.  
 as to knowledge of signature, 241.  
 authority to pay, when payable at, 66.  
 bill or note payable at, 583.  
 cashier as payee or indorsee, 112, 113, 471.  
 certificate of deposit by, 260.  
 contract with depositor, 249.  
 credit by, in books, 250.  
 custom as to demand note, 187 note.  
 defined, 345, 695.  
 depositor's right to draw on bank, 249, 250.  
 draft by, 264.  
 duty of care owed it by depositor, 633.  
 duty of collecting bank as to notices of dishonor, 209.  
 hours for making presentment, 192.  
 indorsement to, for collection, 121.  
 indorsement to, for deposit, 120, 121.  
 instrument payable at, 583.  
 issue bills of credit, 265.  
 knowledge of the instrument, 242.  
 liable after acceptance of check, 248, 687.  
 liable in tort, 250.  
 liable on certified check, 248, 687.  
 liable only to depositor for failure to honor check, 250.  
 liability as to forged instruments, 423.  
 liability on failure to honor check, 250.  
 liability on certified check, 248, 687.  
 liability on payment of forged check, 241, 242, 244.  
 liability for notary's negligence, 210 note.  
 liability to agent of undisclosed principal, 250.  
 may give notice, 196.  
 not liable on check unless accepted or certified, 248, 687.  
 not required to make part payment of check, 250.  
 note payable at, effect if no funds, 192.  
 notice by, before maturity, 191.  
 payable at, 66, 191.  
 paying altered check, 241, 242, 244.  
 paying stale check, 243.  
 presentment for payment at, 237, 572.  
 refusing to pay certified check, 239.  
 suit by on collection paper, 121.  
 when instrument is made payable at, 583.  
 what will be considered a bank, 345, 695.

**BANK BILLS, see BANK NOTE.**

**BANK CHECKS, see CHECK.**

**BANK DRAFT, 264.**

**BANK MESSENGER, 350.**

**BANK NOTE—**

description and characteristics of, 265, 266.  
 how differs from treasury note, 265, 266.

[REFERENCES ARE TO PAGES.]

**BANK NOTE—continued—**

- how secured, 265, 266.
- meaning of, 265, 266.
- presumption as to possession, 265, 266.
- rights of bona fide holder, 265, 266.
- stolen, 265, 266.

**BANKER'S LIEN, 153.**

- on instrument, constitutes bank holder for value, 153.

**BANKRUPT—**

- as payee, 33.
- discharged from liability on instrument, 224.
- drawee, presentment for acceptance to, 101, 658, 659.
- notice of dishonor to, 198, 598.
- notice of dishonor in case of, 198, 598.
- of party to be notified of dishonor, notice to whom, 198, 598.

**BANKRUPTCY—**

- discharged from liability on instrument, 224.
- effect on presentment and notice, 101, 198, 598, 658, 659.
- how transfer when, 33.
- indorsement after, 33.
- of holder, transfer by operation of law, 130.
- of primary party, effect on secondary parties, 623.
- paper sold before, 33.

**BEARER—**

- bill or note payable to, 50, 395.
- defined, 50, 395.
- indorsement in blank makes instrument payable to, 51, 128, 395, 462.
- instrument payable to person named or bearer, 51, 395.
- instrument payable to cash is payable to, 51, 395, 396.
- instrument payable to sundries is payable, 51, 395, 396.
- instrument payable to estate, 51.
- instrument payable to, transferable by delivery, 51, 128, 395, 462.
- instrument when last indorsement is in blank, 51, 395.
- payable to, negotiation by delivery, 128, 462.
- payable to, no indorsement, 128, 462.
- payable to order of fictitious person, 51, 395.
- special indorsement on instrument made payable to, 128, 462.
- to payee who is not a person, 51, 395.
- when is instrument made payable to, 51, 395.
- words indicating, 51, 395.

**BILL, see BILLS OF EXCHANGE; COMPLAINT.**

**BILL OF LADING—**

- assignment of, 259.
- attached to bill of exchange, 260.
- contents, 258.
- defined, 258, 427.
- draft attached to, 260.
- how differs from bill or note, 259.
- how used, 258, 259.
- lost, 259.

[REFERENCES ARE TO PAGES.]

**BILL OF LADING—continued—**

- right to stop goods in transitu, 259.
- sets of, 258.
- when issued in sets, 258.
- whether negotiable, 259.

**BILL OR NOTE—**

- doubt as to whether instrument is, 43, 676, 680.
- meaning of term, 43, 640, 676, 680.

**BILLS IN A SET—**

- acceptance by drawer, 70.
- acceptance of, 70, 674.
- acceptor of, 70.
- acceptor paying one part, 70, 673.
- constitute one bill, 70, 673.
- copies distinguished, 70.
- different parts negotiated rights of holder, 70, 673.
- discharge, 70, 674.
- effect when one accepted and paid, 71, 673, 674.
- form, 69.
- liability of drawee for accepting more than one copy, 70, 674.
- liability of indorsers, 70, 673.
- object of, 70.
- payment of one part, 70, 674.
- payment of, without surrender of bill, 70, 674.
- rights of different holders, 70, 674.
- when drawee accepts more than one part, 70, 674.
- when holder indorses parts to different persons, 70, 673.
- when parts held by different persons, 70, 673.
- when treated as one bill, 70, 673.
- where acceptance written, 70, 674.
- which copy negotiated, 70.

**BILLS OF CREDIT, see LETTERS OF CREDIT.****BILLS OF EXCHANGE—**

- acceptance defined, 85, 86, 87, 646, 695.
- may be required to be written on, 87, 649.
- to pay at a particular place, 92.
- while incomplete, overdue or dishonored, 88, 91, 652.
- on paper other than the bill itself, 89, 93, 649.
- accepted for honor, protest or non-payment, 100, 103, 667.
- acceptor, 90.
- accommodation parties, see "ACCOMMODATION."
- ambiguous instrument treated as bill or note, 413.
- antecedent promise to accept, 90, 94, 650.
- "bill" means bill of exchange, 43, 640, 676, 680.
- damages for non-payment, 250.
- defined, 43, 91, 640.
- destruction or retention by drawee, 96, 652.
- development of uses of, 11, 12, 15.
- difference between, and promissory notes, 11.
- difference between, and checks, 234, 680.
- difference between foreign and inland, 643.

[REFERENCES ARE TO PAGES.]

## BILLS OF EXCHANGE—continued—

- drawee, 11, 85.
- drawer, 11, 85.
- duty of holder on non-acceptance, 186, 661.
- earliest form of negotiable instrument, 11, 12, 15.
- effect of non-presentment for acceptance of, 97, 98, 186, 187, 657, 660.
- effect of qualified acceptance of, 90.
- essentials of, 44.
- first use of, 15.
- foreign defined, 44, 643.
- form of, 11, 87.
- general acceptance of, 88, 92.
- general characteristics, 11.
- how accepted, 88, 90, 93, 649.
- how drawee becomes acceptor, 11.
- indorsed in blank, to whom payable, 51, 217, 395.
- inland, defined, 44, 643.
- insertion of referee in case of need, 61, 644.
- is not an assignment, 86.
- kinds of, 44, 90, 92.
- laws codified, 15.
- may be addressed to two or more drawees—but not to two or more in the alternative, 60, 643.
- not an assignment of funds, 86, 642.
- origin and history of, 15.
- origin in England, 15.
- origin under law merchant, 15.
- payee, 11.
- parties to, 11, 60, 643.
- presentment for acceptance, see also ACCEPTANCE; PRESENTMENT.
  - how made, 98, 658.
  - on part holiday, 99, 186, 658, 659.
  - on Saturday, 99, 186, 658, 659.
  - to bankrupt or insolvent drawee, 98, 658.
  - to partners, 98.
  - when drawee dead, 98, 658.
  - when to be made, 97, 185, 657.
  - where time is insufficient, 99, 658, 659.
- qualified acceptance of, 90, 92.
- referee in case of need, 61, 644.
- rights of holder on non-acceptance, 103, 669.
- right of holder to refuse qualified acceptance, 91.
- three parties, 11.
- time allowed drawee to accept, 96, 651.
- to whom may be addressed, 61, 644.
- trade transactions in origin, 15.
- use by merchants of Florence and Venice, 15.
- use by English merchant, 15.
- when bill may be treated as promissory note, 61, 644.
- when dishonored by non-acceptance, 186, 661.
- when drawer and drawee are same person, 61, 644.
- when may be presented for acceptance, 97, 185, 657.

[REFERENCES ARE TO PAGES.]

**BILLS OF EXCHANGE—continued—**

- when payable to bearer, holder entitled to receive payment, 217, 218.
- when presentment for acceptance is excused, 100, 660.
- where drawee has not capacity to contract, 61, 644.
- where drawee is fictitious, 61, 644.

**BLANK—**

- alterations, 178, 637.
- agent to fill, 67, 68, 403.
- as to rate of interest, 403, 414.
- as to payee's name, 236.
- authority to fill in, 67, 68, 403, 404, 405.
- before—"after date," 404.
- burden of proof on authority to fill, 403, 404.
- delivery in, 405.
- filled in by holder, 403, 404.
- filled without authority, 67, 403, 407.
- filling in amount, 68, 403, 404.
- filling in by cashier, 405.
- for name of payee, 68, 403, 404, 405.
- for name of indorsee and drawer, 68, 403, 404, 405.
- indorsement in, 117.
- indorsement, when may be negotiated by, 117, 462.
- insertion of wrong date, 47.
- in place of payment, 67, 403, 404.
- in provision for interest, 67, 403, 404.
- in provision for attorney's fees, 67, 403, 404.
- in provision for extension of time, 67, 403, 404.
- in date, 67, 403, 404.
- in date of acceptance, 67, 403, 404.
- in time of payment, 67, 403, 404.
- inserting attorney's fees, 403.
- knowledge of, by purchaser, 67, 403, 404.
- liability to holder in due course, 68, 403, 404.
- presumption as to authority, 403.
- right to fill in, 405.
- rights of bona fide holder, 68, 403, 404.
- time for filling, 67, 403.
- when may be filled, 68, 403.
- when improperly filled, 67, 403, 404.
- whether a new delivery necessary when filled by another, 67.
- whether payee is protected as holder in due course, 67.

**BLANK INDORSEMENT—**

- converted into special, 117, 463, 469.
- effect, when afterward indorsed in full, 117, 463.
- how converted into special, 117, 463, 469.
- in general, 117.
- negotiable by delivery, 117.

**BLANK SPACE—**

- effect of filling in, 67, 177, 178, 403.
- fraud in filling, 67, 177, 178, 403.

## [REFERENCES ARE TO PAGES.]

**BOARD OF DIRECTORS—**

power to issue negotiable paper, 40.

**BOARD OF TRADE NOTES—164.****BOHEMIAN OATS—Notes**

exorbitant price for, 181.

sale of notes for, when illegal, 181.

**BONA FIDE HOLDER, see also HOLDER IN DUE COURSE—**

can recover on accommodation paper issued by corporation, 147.

cannot recover when consideration void by statute, 81.

consideration, want of, no defense against, 81, 82.

defenses against, 150.

defenses available against, 151.

elements of, 149, 484.

equities, 23, 150.

explained, 22.

good faith defined, 150.

illegal consideration not a defense against, 180, 181.

instrument declared void by law, 180, 181.

intoxication as a defense against, 163n.

lien on instrument makes one a, 153.

must acquire instrument for valuable consideration, 149.

must be holder for value, 150.

must be holder without notice, 150, 153.

must be holder in due course, 150.

partial failure of consideration not a defense against, 180, 181.

rights of, 149.

total failure of consideration not a defense against, 180, 181.

want of consideration not a defense against, 179, 180, 181.

when protected against material alteration, 176, 177, 178.

when statute declares instrument void cannot recover, 180, 181.

where there is want or failure of consideration, 179, 180, 181.

who is, 22, 150.

**BONDS, see also COUPON BONDS; MUNICIPAL BONDS—**

and coupons, characteristics, negotiability, 262, 372.

how made non-negotiable, 263.

indorsement, 263.

negotiable, 262, 263.

negotiable, how made non-negotiable, 262, 263.

non-negotiable, 262, 263.

public or corporate, 262, 263.

when negotiable, 262, 263.

**BRANCH POSTOFFICE—**

effect of deposit of notice of dishonor in, 200, 601, 602.

**BREACH OF FAITH—**

negotiation in, 150, 501, 502.

**BROKER—**

liability of, on negotiation, without indorsement, 144, 561, 562.

**BURDEN OF PROOF—**

accommodation, 448, 449, 450.

absence of consideration, 444, 445.

## [REFERENCES ARE TO PAGES.]

**BURDEN OF PROOF**—continued—

- alteration, 631, 632, 633.
- as to consideration, 77, 527, 528.
- as to filling blanks, 404.
- as to fraud and duress, 342, 527, 528, 531.
- as to holding in due course when title of transferor defective, 342, 342, 527, 528.
- as to mistake, 342, 527, 528.
- as to payment, 343.
- as to presentment, 344.
- as to promptness in presentment for payment or excuse for delay, 344.
- as to transfer, 340.
- as to usury, 343.
- as to validity of contracts of married women, 32.
- authority to fill blanks, 403, 404.
- changed by evidence, 329.
- conditional delivery, 63, 339.
- failure of consideration, 444, 445.
- fraud, 342, 527, 528.
- in general, 330.
- is on person alleging payment, 343.
- material allegations to be proved by plaintiff, 330.
- of diligence, as excuse for non-presentment, etc., 344.
- of showing payment, 224.
- on party alleging unintentional cancellation, 221, 630.
- payment, 343.
- presentment, notice and waiver, 343, 344.
- release, 343.
- to show mistake in cancellation, 221, 630.
- unintentional cancellation, 221, 630.
- where title of prior party was defective, 527, 528, 529, 530.
- whether it means going forward with evidence or establishing by preponderance of evidence, 330.

**BURNING OF INSTRUMENT OR PARTS**—630.**BUSINESS**—

- bona fide holder must acquire paper in usual course of, 149.
- presentment at place of, 187, 570.

## C

**CALAMITY**—

- as excuse for non-presentment, etc., 192, 576.

**CALENDAR MONTH**, see **MONTH**.**CALIFORNIA CIVIL CODE**, 15.**CANADA CURRENCY**, 60.**CANADA MONEY**, 60—

- instruments payable in, 60.

**CANCELLATION**—

- burden of proof, 221, 630.
- consideration unnecessary, 220.
- discharges instrument 214, 220, 615.

## [REFERENCES ARE TO PAGES.]

**CANCELLATION—continued—**

- discharge of indorsement by, 214, 220, 615.
- effect of, 220, 221, 615.
- how accomplished, 220, 221, 615.
- intentional, 220, 221, 615.
- must be intentional, 220, 221, 615, 630.
- of negotiable instruments, 214, 215, 220, 221, 615.
- of signature of person secondarily liable, 225, 621.
- unintentional, 221, 615, 630.
- unintentional, effect of, 221, 615, 630.
- when payee tears up intentionally, 217.
- without authority, 221, 615, 630.

**CANCELLED CHECKS, 244.****CAPACITY—**

- acceptance admits capacity of drawer to draw bill, 141.
- admission of, 139, 140, 141.
- in general, 27.
- incapacity as a defense, 160.
- lack of mental capacity, 30, 163.
- law governing, 229.
- of administrators, 34.
- of agents, 35.
- of committees, 33.
- of drunkards and spendthrifts, 31, 163.
- of executors, 34.
- of guardians, 35.
- of infant, disaffirmance by, 29, 160.
- of infant, indorsement, 29, 160.
- of infants, 28, 160.
- of infants, on instrument given for necessities, 28, 160, 161.
- of infants, ratification, 28.
- of lunatics, 30, 163.
- of married women, 32, 162.
- of municipal corporations, 41, 162.
- of partners, 38.
- of payee to indorse warranted by drawer, acceptor, and maker, 139, 140, 141.
- of private corporations, 40, 162.
- of public corporations, 41, 162.
- of public officers, 42.
- of spendthrifts, 32.
- of trustees, 35.
- parties not incapacitated, 33.
- rules governing contracts apply, 27.
- to indorse, 139, 140, 141.
- warranty of where negotiation by delivery, 143, 555.
- warranty of by indorser, 142, 143, 555.

**CARBON PAPER—**

- forgery by, 424.

**CASE OF NEED, 61, 644.**



## [REFERENCES ARE TO PAGES.]

**CASH—**

- checks payable to, 396.
- instrument payable to, 396.

**CASHIER—**

- as payee or indorser, 40, 471.
- authority of to certify checks, 240.
- authority to extend time of payment, 40.
- authority to issue negotiable paper, 40.
- drawn payable to, 40.
- indorsed payable to, 40.
- or other fiscal officer, instrument drawn or indorsed to, 471.
- presumed to be at bank, 344.
- when so indorsed, to whom payable, 40.

**CASHIER'S CHECK, 236, 243.****CAUSE OF ACTION—**

- cannot be split up, 115.

**CERTAIN AS TO AMOUNT, see also AMOUNT—**

- effect of words "with exchange," 52, 54, 377.
- effect of words "attorney's fees," 53, 54, 377.
- effect of words "with current exchange on another place," 52, 377.
- failure to pay an installment, 54, 377.
- interest added, 53, 54, 377.
- principal and interest, 370.

**CERTAIN AS TO PLACE OF PAYMENT—**

- purpose of, 55, 391.
- whether or not necessary, 56, 391.

**CERTAIN AS TO TIME—**

- effect of payable "on or before," 55, 385.
- illustrations, where uncertain, 54.
- indication of fund for reimbursement, 55, 381.
- must be payable without conditions, 54, 385.
- must not be payable on contingency, 54, 385.
- payable after death, 54.
- payable at a determinable future time, 54, 385.
- payable out of a particular fund, 55, 381, 385.
- when considered so payable, 54, 381, 385.

**CERTAINTY—**

- as to amount to be paid, 52, 54, 377.
- as to engagement to pay, 49, 51.
- as to fact of payment, 51.
- as to medium of payment, 57, 381.
- of sum payable not affected by certain provisions, 55, 57, 381, 385.
- where event is certain to happen, 54, 385.

**CERTIFICATE—**

- of notary as evidence, 208.

**CERTIFICATE OF DEPOSIT—**

- conditional payment, 261.
- definition of, 260.
- in general, 676, 678.

## [REFERENCES ARE TO PAGES.]

**CERTIFICATE OF DEPOSIT—continued—**

- issue of, as value, 485.
- meaning of, 260, 400, 372.
- negotiability, 260, 370, 371.
- payable on demand must be presented within reasonable time, 260.
- when a note in effect, 260.
- when must be presented for payment to charge indorsers, 260.
- whether a check, 680.
- whether or not payment, 261.

**CERTIFICATE OF PROTEST—see PROTEST.**

seal, 204.

**CERTIFICATE OF STOCK—**

- defined, 261.
- description and nature, 261.
- found, 261.
- how signed, 261.
- how transferred, 261.
- meaning of, 261.
- not stock, 261.
- stolen, 261.
- title of purchaser, 261.

**CERTIFICATION OF CHECK—**

- advantages of, 238.
- by mistake, 689.
- by telegrám, 240.
- effect of, when procured by holder, 239, 686.
- effect of retention, 651, 652.
- equivalent to acceptance, 239, 684, 687.
- form of, 238.
- holder's right to sue bank, 248.
- in general, 238.
- liability of bank, 239, 684.
- not by parol, 240.
- not by telephone, 240.
- raised, 240.
- rights of bank if raised before certification, 240.
- set-off, 239.
- where drawer has check certified, 239.
- where holder has check certified, 239, 686.
- who may make, 240.

**CHARGE, 352.****CHATTEL NOTE, 383.****CHECK—**

- acceptance of, if stated to be in full payment, 686.
- advantage of certification, 238.
- amount must be certain, 236.
- ante-dated, 236.
- as payment, 235, 246.

## [REFERENCES ARE TO PAGES.]

## CHECK—continued—

- as payment, 246.
  - in compromise, 246.
  - memorandum on, 246.
  - when full payment, 246.
- bank cashier's failure to present, 566.
- bank's liability on failure to honor, 250.
- bank's refusal to pay certified check, 239.
- by corporation, 249.
- by partnership, 249.
- by trustees, 249.
- cancelled, 244, see PAID also.
- cannot be certified before payable, 240.
- cashier's, 243.
  - defined, 243.
  - payable on demand, 243.
- certification of, 238, 684.
- certification of, effect, 238, 684.
- contract to pay at a future day, 235.
- crossed, 244.
  - defined, 244.
  - direction of, 244.
  - negotiability not destroyed, 244.
  - object, 244.
- defined, 234, 680.
- delivered to an imposter, 244.
- depositor's right to draw on bank, 249.
- distinguished from bill of exchange, 234.
- drawee, 11.
- drawer or maker, 11.
- drawer when discharged, 239, 686.
- drawn by partnership, 249.
- duty of depositor as to forged check, 241,
- effect of death of drawer, 688.
- effect of no funds in bank, 237, 250.
- effect of retention by bank, 85, 652.
- effect of payment after countermand, 246, 247.
- effect of ordering payment subsequent to date, 234, 235.
- failure of bank cashier to present, 566.
- figures changed, 236.
- forgery and alteration of, 241.
- form of, 11, 236.
- fraudulent check, 244.
  - delivered to imposter, 244.
  - issuance when criminal, 244.
  - liability of bank for paying, 244.
  - when drawer must suffer loss, 244.
- general characteristics, 11, 236.
- holder of certified may sue bank, 248.
- holder of forged, 242.
- is not assignment, 249.
- maker or drawer, 11.

## [REFERENCES ARE TO PAGES.]

**CHECK—continued—**

- may be transferred by indorsement, 235.
- memorandum in general, 242.
- need not be presented for acceptance, 234.
- not an assignment, 248, 687.
- not an assignment of drawer's funds, 248, 687.
- oral representation as to funds, 240.
- overdraft payments, 250.
- paid or cancelled check, 244.
  - bank has right to keep until account balanced, 244.
  - bank holds as agent, 244.
  - presumed a receipt, 244.
  - receipt for debt, 244.
- payable on demand, 235, 243.
- payable only in money, 236.
- payee, 11.
- payee collecting after death of drawer, 238.
- payment of forged, 241.
- payment by charging drawer's account, 651, 652.
- payment by bank after death of drawer, 238.
- past-dated, nature, 236.
- person to whom payable must be certain, 236.
- presentment, protest and notice of dishonor, 237.
- presumption as to payment, 330.
- reasonable time as to, 237.
- reasonable time of presentment, 566, 682.
- right to stop payment of note, 246.
- stale, in general, 243.
- stolen checks or negotiable instruments, 245.
  - blank check, 245.
  - holder's burden, 246.
  - no title acquired, 245.
  - when bona fide holder for value without notice may retain, 245.
- stopping payment of, 246.
  - before certification, 247.
  - form of, in writing, 247.
  - may be oral, 246.
  - must be before payment, 246.
  - notice of dishonor not necessary after, 247.
  - sufficient allegation of, 247.
- teller's or cashier, 243.
- time must be certain, 236.
- time allowed bank to accept, 96, 237.
- traveler's, in general, 251.
- traveler's forged, counter-signature, 252.
- when delay in presenting discharges drawer, 237.
- when due, 236.
- when failure to give notice of dishonor, 682, 683.
- when must be presented, 237, 682.
- when statute of limitations begins to run against, 236.
- whether accepted as payment, 236.
- whether negligence to send to drawer for collection, 682, 683.

## [REFERENCES ARE TO PAGES.]

## CHECK—continued—

- who may certify, 240.
- within what time must be presented, 237, 566, 682.
- words of negotiability in, 236.

## CIRCUITY OF ACTION, 115.

## CIRCULATION—

- when parties not immediate, 25.

CIRCUMSTANCES, see EXCUSE FOR NON-PRESENTMENT—  
may amount to notice, etc., 202, 609.

## CIRCUMSTANTIAL EVIDENCE—

- as to fraud and duress, 342, 343.
- as to usury, 343.
- proof of execution, 339.

## CITIES—

- power to execute negotiable paper, 41, 42.

## CLEARING HOUSE ASSOCIATION, 682.

## CLEARING HOUSE BALANCE—

- effect of payment, 249.

## CLERK—

- notice may be given to, 595.
- presentment to, 193, 595.

## CODE PROCEDURE, 347.

## CODES—

- American, 15.
- continental, 15.
- English, 15.

## CODIFICATION, 15

## COERCION, 175.

## COINS—

- instruments payable in, 59.

## COLLATERAL ACCEPTANCE, 65, 649.

## COLLATERAL AGREEMENT—

- as to effect of delivery, 408, 409.
- as to use of instrument by payee, 408, 409.
- authorizing sale of, does not affect negotiability, 57 388.
- consideration, 65.
- effect on negotiability, 65.
- for consideration in addition to that specified, 65.
- for delay of payment until contingent event, 65.
- for payment by installments, 410.
- for renewal on extension, 65.
- in case of depreciation more added, 390.
- in general, 65.
- in writing, 65.
- not notice, 64, 65.
- oral, 410.
- renewal of bill or note, 65.

## [REFERENCES ARE TO PAGES.]

## COLLATERAL AGREEMENT—continued—

that endorsement is without recourse, 467.

to vary liability of endorser, 467.

## COLLATERAL FACTS—

proof in certificate of protest, 208.

## COLLATERAL INSTRUMENT, 278, 281, 283.

## COLLATERAL SECURITIES—

application of, to debt, effect on party secondarily liable, 289.

deposit of, which may be sold, 285.

holder receiving collaterals not required to proceed upon before suing indorser, 286.

instruments taken as, for contemporaneous and pre-existing debts, 281.

must be tendered with instrument, 279.

parting with, effect of, on surety's liability, 286.

promise to furnish additional, 285.

promise to keep free from incumbrance, 389.

provision for sale of, 65.

provision for sale of, see also VALUE, 285, 432, 433, 434.

possession of by holder as defense to indorser, 286.

rights when principal obligation due after collateral, 77.

sale of, authorized, 285.

surrender of, waiver of effect, 286.

surrender of discharges indorser, 286.

surrender to principal or impairment or failure to use as defense for surety, 286.

that holder has is no defense to maker, 286.

that indorser has deposited is no defense to maker, 286.

to surrender as defense, 542.

## COLLECTION—

as to notice, 209.

bill or note payable with costs of, 54, 377.

costs of provision for, 54, 377.

holder for, suing as real party in interest, 340, 481.

indorsement for, 120, 340.

liability of indorser, 120.

whether indorser for, entitled to notice, 196, 197.

## COLLECTING BANK—

duty as to notice of dishonor, 209.

## COLLECTION AGENTS—

banks as, 121.

## COMMERCIAL PAPER, see also NEGOTIABLE INSTRUMENTS—

common forms, 1, 11.

medium for commercial transactions, 1, 11.

other kinds, 258.

## COMMITTEE, see EXECUTORS AND ADMINISTRATORS.

## COMMON LAW—

prohibitions, 180.

whether married woman make negotiable instruments at, 162.

whether promissory notes negotiable at, 15.

[REFERENCES ARE TO PAGES.]

COMMON LAW PROCEDURE, 346.

COMPENSATION—

for trouble and expense, not usury, 167.

COMPETENCY OF PARTIES AS WITNESSES—

drawer, 330.

in general, 330.

indorser, 330.

maker, 330.

payee, 330.

COMPLAINT, see FORMS OF COMMON LAW AND CODE PLEADING—

caption of, 304.

meaning of, 304.

what is, 304.

what it contains, 304.

COMPLETION—

of negotiable instruments, 63, 108.

COMPLIANCE—

strict, with terms of act necessary, 45, 399.

COMPOUND INTEREST, 167.

COMPROMISE—

as a consideration, 73.

COMPUTATION—

of time, 332, 333, 701.

CONCEALED SURETIES—

American rule, 272, 273.

English common law rule, 272, 273.

English equitable rule, 272, 273.

CONDITION—

conflict of laws as to, 341.

illustration of, in note, 54, 56.

in collateral contract, holder in due course not affected, 64, 65.

instrument payable on, not negotiable, 54, 385.

memorandum that instrument is given as collateral security, 284.

negotiable instrument must not be payable upon, 54, 385.

CONDITIONAL ACCEPTANCES, 654, 655.

CONDITIONAL DELIVERY—

when in writing, 64, 409.

CONDITIONAL INDORSEMENT—

condition in, does not affect negotiability, 118.

defined, 117, 118.

examples of, 118.

indorsee holds subject to rights of indorser, 469.

in general, 116, 117, 469.

party paying may disregard condition, 469.

right of parties liable, 117, 469.

CONDITIONAL PAYMENT—

effect of, 219.

whether payment by negotiable instrument is, 20, 21.

[REFERENCES ARE TO PAGES.]

CONFESSION OF JUDGMENT—

- affidavit required, 58.
- effect of provision, 57, 388, 389.
- power of attorney, 57, 58.
- provision for, 7, 388.
- provision authorizing, does not affect negotiability, 57, 388.
- when recognized, 58.

CONFLICT—

- between words and figures, 338, 339, 413.
- between written and printed provisions, 338, 339, 413.

CONFLICT OF LAWS—

- acceptor governed by laws of place and acceptance, 230.
- accommodation indorsement by married woman, 32.
- as to capacity of parties, 229, 230.
- bill payable in foreign country, 233.
- bills drawn in one country and paid in another, 233.
- by what laws demand of payment determined, 232.
- capacity, 229.
- conditions, 341.
- damages, 233.
- drawer's contract, 230.
- grace, 581, 582.
- indorser, liability of, controlled by law of place where made, 231.
- interest rate, 231.
- interpretation, meaning of, 228.
- interpretation and obligation, what law controls, 228.
- in general, 227.
- lex forum* governs name, 231.
- lex loci contractus* governs as to validity, interpretation, nature, obligation, etc., 228.
- maker governed by law of place, 230.
- negotiability, 230.
- notice of dishonor, 232.
- oral acceptance, 86.
- parties may agree as to law to govern, 228.
- place of performance, 229.
- presentment, what law controls formalities of, 232.
- protest, 232.
- rule in federal courts, 232.
- rule in U. S. courts, 232.
- taxation, 227n.
- usurious interest, 231.
- validity of instrument, what law determines, 228.
- when an agreement, 228.

CONSIDERATION, see also VALUABLE CONSIDERATION; VALUE—

- anomalous indorsement after delivery to payee, 124, 125.
- antecedent debt is, 72, 432.
- absence of, failure of, 81, 179, 444, 446.
- accommodation parties, 74.
- agreement to marry, 75.
- between immediate parties, 77.



## [REFERENCES ARE TO PAGES.]

## CONSIDERATION—continued—

- burden of proof, 77, 428, 429.
- collateral agreements, 65.
- collateral security amount recoverable, 77.
- cross-notes, 75.
- defined, 72, 432.
- examples of valuable, 72, 73.
- expenditures based on gift note, 75.
- failure of, 81, 179, 444, 446.
- failure of as against one not a bona fide holder, 82.
- failure of, burden of proof, 77, 527, 528.
- for patent right notes, 80.
- fraudulent, effect of, 80, 81.
- gift, 74.
- gift notes, 75.
- illegal, 80, 180.
- illegal, immoral and fraudulent, 81.
- illegal and void by statute distinguished, 81, 181.
- illegal, obtaining for, 80, 180.
- illegal, what amounts to, 81, 180.
- illegality of, 81, 180.
- illustrations of, 81.
- inadequacy of, 79.
- instruments taken as collateral security for contemporaneous and pre-existing debts, 151, 152.
- lack of, when a defense, 82.
- lien, 76.
- love and affection, 74.
- meaning of, 72, 432.
- must be valuable, 432.
- necessity of, 77.
- not necessary for cancellation, 220.
- note taken as collateral security, 76.
- partial failure of, 81, 180, 444.
- partial failure of, a defense *pro tanto*, 82, 180, 444.
- patent right, 80.
- pledge for establishing church, 75.
- pledge for hospital, 75.
- pre-existing debt as, 72, 432.
- presumed, 77, 78, 427.
- presumed for acceptance for honor, 102.
- presumption of, 77, 427.
- prohibited by common law, 180.
- questions of, against whom raised, 82.
- seal imports, 77, 78.
- speculative, 705.
- speculative instrument given for, 705.
- subscription for school, 75.
- sufficiency of, 73.
- total failure of, 81, 179.
- value of, not considered, 73.
- void by statute, 169.

[REFERENCES ARE TO PAGES.]

**CONSIDERATION—continued—**

- want of, 79, 81, 179, 444.
- want of, as a defense, 79, 81, 179, 444.
- what is, 432, 436.
- when must be proved, 336, 337.
- whether necessary to support guaranty, 269, 270.
- whether necessary to support intentional cancellation, 220.

**CONSTRUCTION—**

- of ambiguous instruments, 45, 338, 413.
- of power of attorney to confess judgment, 57, 58, 338.
- rules of, 45, 57, 58, 338, 413.
- where language ambiguous, 45, 338, 413.
- where omissions, 45, 338, 413.

**CONSTRUCTIVE NOTICE, see NOTICE.****CONTAGIOUS DISEASE—**

- existence of, as excuse for non-presentment, etc., 202.

**CONTEMPORANEOUS DEBT—**

- collateral security taken for, 151, 281.

**CONTEMPORANEOUS WRITINGS, 65.****CONTINGENCIES—**

- as to time of payment, 54, 386.
- indication of particular funds, is not, 55, 382.
- instruments payable on, not negotiable, 54, 386.
- note given as collateral, 151.
- statement of transaction, 57, 381.

**CONTINUATION—**

- of negotiability, 127.

**CONTRACT—**

- act discharging simply as discharge of instrument, 615.
- incorporation of in instrument, 382, 383.
- note attached to, 382, 383, 632.
- notice of, 632.
- of indorser, 4.
- of married woman, whether enforceable, laws tabulated by states, 711, 712, 713.

**CONTRACTOR'S ORDER, 640.****CONTRIBUTION—**

- equal indorsers entitled to, 147, 148.
- none between successive indorsers, 147, 148.

**COPARTNERSHIP, see PARTNERS.****CO-PROMISORS—**

- presentment for payment to, 193, 574.
- use in protest, 212, 665.
- when used on which to make protest, 212, 665.

**CORPORATE SECURITIES, 144.****CORPORATION—**

- acceptor admits capacity of to draw, 141, 541.
- check by, 249.

## [REFERENCES ARE TO PAGES.]

## CORPORATION—continued—

- form of corporate signature, 41.
- foreign statute invalidating contracts, 169.
- fiscal officer of, as payee or indorsee, 112, 471.
- has no power to become accommodation party, 147.
- included in word "person," 695.
- indorsement or assignment by, 142, 421.
- negotiation of instrument, 142, 421.
- officers signing for accommodation, 147.
- officer of, indorsing, 112, 471.
- power to issue note, 162.
- power to issue accommodation paper, 147.
- proof of authority to act as agent of, 38.
- seal of, dispensed with, 41.
- securities of, not warranted upon negotiation, 552, 553.
- want of capacity, 162.

## COSTS—

- of collection, stipulations as to, 54, 377.

## CO-SURETIES, 148.

## COUNTER-CLAIM—

- in general, 18, 20.

## COUPON BONDS, see also BONDS—

- as to form, 262.
- defined, 262.
- how issued, 263.
- how made non-negotiable, 263.
- meaning of, 262.
- must holder of coupon own bond, 262.
- negotiability, 262.
- who issues, 262.

## COURSE OF BUSINESS—

- bona fide* holder must acquire instrument in usual course of business, 149, 484.

## COVERTURES, see DEFENSES; MARRIED WOMEN.

## COVENANT NOT TO SUE—

- effect of, 221.
- when instrument discharged by, 221.
- when sureties released by, 221.

## CREDIT, see VALUE.

## CREDIT, BILLS OF, see LETTERS OF CREDIT.

## CURRENCY—

- instrument payable in, 59, 60.
- what term includes, 59, 60

## CURRENT FUNDS, 59.

## CURRENT LEGAL TENDER, 59, 60.

## CURRENT MONEY—

- designation of particular kind of does not affect negotiability, 59, 391
- effect of designating a particular kind, 59, 391.

[REFERENCES ARE TO PAGES.]

**CURRENT MONEY**—continued—

- instrument payable in, 59, 391.
- particular kind may be specified, 59, 391.
- what constitutes, 59, 391.

**CUSTOM**, 187n, 212.**D****DAMAGES**—

- for non-payment, of bills of exchange, 141.
- on failure of bank, 236, 237, 250.
- payable by secondary parties, 141.
- recovery of, what law governs, 236, 237, 238.

**DATE**—

- absence of does not affect validity of instrument, 46, 391.
- alteration of, 176, 636.
- ante-dated, 47, 401.
- construction when instrument not dated, 338, 413.
- evidence to show mistake as to date, 46, 47.
- from what date law takes effect, 400, 413.
- from which interest runs, 413.
- insertion of, in undated instrument, 47, 402.
- in instrument prima facie true date, 46, 400.
- insertion of wrong date, 47, 402.
- instrument not effective at, but at delivery, 47.
- mistake shown by parol, 46.
- mistake in, 47.
- not necessary, 46, 391.
- of acceptance may be inserted in draft, 47, 402.
- of indorsement, presumption as to, 46, 473.
- of negotiable instruments, 46, 391.
- omission of does not affect negotiability, 46, 391.
- omission of, presumption as to, 46, 400, 413.
- omission of, when interest runs, 413.
- place for writing, 46.
- post-date, instrument may be antedated or post-dated, 47, 401.
- presumption as to, 46, 400, 473.
- presumption as to execution, 46.
- presumption when none, 46, 333, 400.
- when blank left, 47, 402.
- when indorsement obtained after transfer, 109.
- when date may be inserted, 47, 402.

**DAYS**—

- computation of, 66, 332, 333, 701.

**DAYS OF GRACE**—

- abolished, 66, 580.
- how computed, 66, 580.
- how many, 66.
- in general, 66, 580.
- laws of tabulated by states, 708, 709.
- meaning of, 66.

## [REFERENCES ARE TO PAGES.]

## DAYS OF GRACE—continued—

- not allowed except in some states on sight drafts, 66.
- origin of, 66.
- rule not uniform, 66.
- whether abolished, 66, 580.

## DEAD DRAWEE—

- presentment for acceptance excused, 98, 658.

## DEATH—

- negotiation after, 109, 110.
- notice of dishonor in case of, 196, 198, 596.
- of agent, 202.
- of drawee, how bill of exchange presented for acceptance, 98, 658.
- of drawer of check, 198.
- of indorsee for collection, 110.
- of joint payee, 110.
- of primary party, effect on presentment for payment or acceptance, 98, 658.
- of person, primarily liable, how presentment made, 98, 658.

## DEBT—

- antecedent or pre-existing, is valuable consideration, 72, 73, 432.

## DEBTOR—

- effect of ability and willingness to pay at place of maturity, 188, 563.
- primarily liable, death of, how presentment made, 98, 658.
- secondarily liable, cancellation of signature of, 225, 621.
  - discharge of, 225, 621.
  - effect of agreement for extension of time of payment, 225, 621.
  - effect of release of principal party, 222, 621.
  - payment by, effect of, 217, 626.

## DECISION—

- should be uniform, 692, 694.

## DECLARATION, see also COMPLAINT—

- of payment for honor, 220, 672.

## DECLARATIONS AND ADMISSIONS, 331.

## DE FACTO HOLDER, 142.

## DEFAULT—

- in presentment, etc., see EXCUSE FOR NON-PRESENTMENT, PROTEST AND NOTICE.
- of payment, 371.

## DEFECT—

- in title, notice of what constitutes, 153, 508.
- notice of, to holder before full amount paid, 153, 500.
- of title, used as a defense, 79, 501.

## DEFECTIVE TITLE—

- what constitutes, 501.

## DEFENDANTS, see ACTIONS ON NEGOTIABLE INSTRUMENTS.

## DEFENSES, see also PERSONAL DEFENSES; REAL DEFENSES.

- absolute, 159.
- against bona fide holder for value, 151, 523.

[REFERENCES ARE TO PAGES.]

## DEFENSES—continued—

- against de facto holder, 142, 523.
- against transferee without endorsement, 476.
- against non-negotiable paper, 131.
- against public policy, 180.
- against whom available, 150, 523.
- alteration, 159, 176.
- classification of, 158.
- consideration, lack of, 179.
- coverture, 32, 160, 162.
- defined, 159.
- drunkenness, 31, 160, 163.
- duress, 159, 160, 178.
- effect on amount of recovery by pledgee or his transferee, 442.
- failure to stamp, 171.
- failure to surrender collateral securities at maturity, 542.
- forgery, 159, 160, 169.
- fraud, 159, 175.
- gaming purposes, 160, 164.
- good against bona fide holder, 160.
- good against immediate parties, 159, 174.
- habitual drunkards, 163.
- illegality of contract, 159, 164.
- incapacity of party, see PARTIES TO NEGOTIABLE INSTRUMENTS, 159.
- incapacity a real defense, 159 et seq.
- incapacity, what amounts to, 162 et seq.
- infancy, 29, 160.
- insanity, 31, 160, 163.
- intoxication, 163, 164.
- issue of corporation instruments *ultra vires*, 160, 162.
- kinds, 158.
- material alteration, see ALTERATION.
- nature of, 158.
- partial failure of consideration, 180.
- patent right note, 58, 705.
- payment, 182.
- personal, 158, 173.
- personal defined, 158.
- real or absolute defenses, 158.
- real and personal, defined, 158, 173.
- real, what are, 158, 160.
- set-off against over-due paper, 157.
- speculative consideration, 164, 179.
- speculative consideration note, 164, 179.
- spendthrift, 163.
- spoliation, 177.
- statute of limitations, 159, 160.
- Sunday contract, 160, 164, 168.
- total failure of consideration, 179.
- ultra vires*, 160.
- usury, 160, 164, 167, 168.

[REFERENCES ARE TO PAGES.]

## DEFENSES—continued—

- void by statute, 160.
- want of consideration, 159, 179.
- what instrument subject to in hands of holder not in due course, 149, 523.
- when statute declares note void, 169.
- whether the equities of a subsequent party can be set up when statute declares note void, 164.

DEFENSES, REAL, 158, 160, see also REAL DEFENSES.

## DEFINITION—

- acceptance, 85, 86, 87, 646, 695.
- accommodation party, 145, 448.
- accommodation parties, 145, 448.
- action, 345, 695.
- bank, 345, 695.
- bank notes, 265, 266.
- bearer, 345, 695.
- bill, 345, 695.
- bill of exchange, 43.
- bill of lading, 258.
- bona fides, 150.
- certificate of deposit, 260.
- certificate of stock, 261.
- check, 234, 680.
- conditional indorsement, 117, 118.
- coupon bonds, 262.
- currency, 59, 60.
- defenses, 159.
- delivery, 62, 695.
- due bill, 264.
- foreign bill, 44, 643.
- forgery, 169.
- foreign bill of exchange, 44, 643.
- fraud, 175.
- general acceptance, 85, 86,, 87, 646, 695.
- guaranty, 267.
- holder, 345, 695.
- indorsement, 695.
- inland bill of exchange, 44, 643.
- inland bill, 44, 643.
- instrument, 3, 45, 695.
- issue, 345, 695.
- legal tender, 59.
- letters of credit, 265.
- material alteration, 176, 177, 631, 636.
- money, 59.
- negotiable promissory note, 44, 676.
- negotiation, 108, 455.
- note, 43, 345, 695.
- notice of dishonor, 184, 194.
- paper money, 265, 266.

## [REFERENCES ARE TO PAGES.]

## DEFINITION—continued—

- payment, 215.
- payment in due course, 182, 218, 584.
- person, 345, 695.
- person primarily liable, 697.
- person secondarily liable, 697.
- personal defenses, 158.
- pleadings, 303.
- presentment, 183.
- promissory note, 43, 676.
- protest, 207.
- qualified acceptance, 654.
- real defenses, 158, 160.
- reasonable time, 333, 699.
- signature, 47.
- special indorsement, 116, 462.
- sufficient consideration, 73.
- suretyship, 267.
- usury, 167.
- value, 72, 152, 432, 695.
- warehouse receipt, 266.
- written, 45, 345, 695.

## DELAY—

- in giving notice when excused, 202, 609.
- in presentment for payment, when excused, 191, 576.
- in presentment to acceptor for honor or referee in case of need,
  - when excused, 186, 659.
- in protest, when excused, 205.

## DELIVERY—

- as between parent and child, 410.
- by notary in person, 205.
- complete by deposit in mail, 62.
- conditional delivery, 63.
- defined, 62, 695, 409, 410.
- essential to completion, 62, 63, 408.
- estoppel to deny, 370.
- how made, 62, 408.
- in violation of instructions, 62.
- indorsement not binding until, 63.
- instrument takes effect on, 63.
- instrument revocable until, 62, 408.
- is negotiation of instrument payable to bearer, 51.
- intent, 62.
- law of place governs, 228.
- liability of negotiator by, 142, 559.
- of instrument on payment, 190, 571.
- may show conditional, 63, 408.
- may show for special purpose, 63, 408.
- meaning of, 62, 695.
- must be authorized, 62, 408.



## [REFERENCES ARE TO PAGES.]

## DELIVERY—continued—

- necessary to complete acceptance, 63, 108.
- necessary to complete indorsement, 63, 108.
- necessary to make indorsement complete, 63, 108.
- necessary to convey title, 63, 108.
- necessity of, 63, 408.
- negotiation by, 63, 108.
- negotiation by, warranties of, 144, 552.
- on condition, 410.
- place of execution is where delivery made, 228.
- possession is prima facie proof of, 63, 408.
- presumptions as to delivery, 63, 408.
- transfer by, 51.
- transferor by, warranties of, 144, 552.
- warranty where negotiation by delivery, 552.
- when once in hands of holder in due course, 63.
- when presumed, 63, 408.
- without authority, 62.

## DEMAND—instruments payable on, 52.

- instrument expressed to be payable, 52.
- instrument issued, etc., when overdue is payable on demand, 52.
- instruments, when presentment must be made, 191, 566.
- note, negotiation of, an unreasonable time after issue, 149, 484.
- overdue bill is payable, 52.
- payable on presentation, 52.
- payable at sight, 52.
- when in instrument payable on, 52.
- when payable on demand, 52.
- when presentment for payment must be made, 191, 566.
- when no time expressed, 52.

## DEMAND INSTRUMENT—

- demand—unnecessary, 563.
- effect of, interest, 564.
- given for antecedent debt, 432.
- may be presented on Saturday, 580.
- when presentment of demand instrument must be made to charge secondary parties, 566.

## DEMAND OF PAYMENT—

See PRESENTMENT FOR PAYMENT.

## DEMAND PAPER—

- laws as to days of grace tabulated by states, 708, 709.

## DEPOSIT—of negotiable instrument, whether bank is purchaser for value, 487.

- check purports to be drawn on, 249.
- indorsement for, 120.
- of fiduciary instrument to personal account, 510.
- whether bank gets legal title, 120.

## DEPOSIT, CERTIFICATES OF—

See CERTIFICATE OF DEPOSIT.

[REFERENCES ARE TO PAGES.]

- DEPOSITOR—**  
rights of, 249.
- DESIGNATION—**  
of particular kind of current money does not affect negotiability, 59, 391.
- DESTROYED BILL—**  
protest of, 212, 666.
- DESTRUCTION—**  
of bill as acceptance, 96, 652.  
of bill of exchange by drawee, 96, 652.  
of bill, protest, 212, 666.  
of bill, whether amounts to implied acceptance, 96, 652.
- DETACHMENT—**of note from contract, 383.
- DETAINED BILL—**  
protest of, 212, 666.
- DETENTION—**  
of bill, whether amounts to implied acceptance, 96, 652.
- DETERMINABLE—**instrument must be payable at, 54, 385.  
fixed period after date or sight is, 54, 385.  
future time, what constitutes, 54, 385.  
on or before fixed time, 54, 385.  
on or after event certain to happen is, 54, 385.
- DIGEST OF LAWS—**  
where negotiable instruments law not adopted, 714 et seq.
- DILIGENCE—**  
in presentment for acceptance, 100, 660.  
in presentment for payment, 192, 576.
- DISABILITY—**  
See INCAPACITY.
- DISAFFIRMANCE—**  
by infant of his indorsement, 29.
- DISCHARGE—**  
by cancellation, 214, 220.  
by novation, 222.  
by other act, 615.  
by payment, effect on negotiability, 182, 615.  
by payment on behalf of principal, 214, 615.  
by payment by party accommodated, 214, 216, 615.  
by payment supposed to be purchase, 224.  
by payment, see also PAYMENT, 182, 615.  
by principal debtor becoming holder, 224.  
effect on negotiability, 182, 615.  
effect of stamping it "paid", 216.  
if held by principal debtor, 214, 615.  
new notes do not act as a, 218.  
of bills in a set, 142, 674.  
of debtor secondarily liable, 182.  
of guarantor, 274.

## [REFERENCES ARE TO PAGES.]

## DISCHARGE—continued—

- of guarantor by surrender of collateral, 274, 275.
- of one part of a bill drawn in a set, 142, 674.
- of instrument by accommodated party, 216, 615.
- of instrument by accord and satisfaction, 221.
- of instrument by alteration, 223, 631.
- of instrument by cancellation, or renunciation, 220, 630.
- of instrument by covenant not to sue, 221, 275.
- of instrument by operation of law, 224.
- of instrument by payment, 182, 215, 481, 615.
- of instrument by principal debtor becoming holder, 222, 615.
- of instrument by renunciation by holder, 225, 628.
- of instrument by substitution of another obligation, 222.
- of instrument by surrender, 220.
- of instrument, how made, 216, 615.
- of negotiable instruments, 216, 615.
- of note, invalid new note not, 218.
- of prior party, effect of on person secondarily liable, 216, 225, 621.
- of surety, 275.
- of surety by surrender of collateral, 274, 275.
- payee tearing up paper intentionally, 217.
- payment in due course, 215, 481, 615.
- what amounts to, of person secondarily liable, 216, 225, 621.
- what is, 215.

## DISCHARGE OF SECONDARY PARTY, 621.

## DISCHARGE BY PAYMENT—

- effect on negotiability, 17.

## DISCOUNT, see also VALUE.

- sale at a, not usury, 167.

## DISCHARGE OF PARTY SECONDARILY LIABLE—

- by cancellation of signature, 621.
- by discharge of prior party, 621.
- by discharge of instrument, 621.
- by release of principal debtor, 621.
- by tender by prior party, 621.
- extension of time, when will discharge, 621.

## DISCREPANCY—

- between words and figures, 338, 413.
- between written and printed provisions, 338, 413.

## DISEASE—

- existence of, as excuse for non-presentment, etc., 202.

## DISHONOR, see also PRESENTMENT; NOTICE; PROTEST.

- acceptance after, 101.
- as between joint indorsers, 197.
- by non-acceptance what amounts to, 186, 660.
- by non-acceptance, effect of, 186, 660.
- by non-payment, 194, 578.
- by qualified acceptance, 140.
- effect of use of word "dishonored", 195.
- liability of drawer, 140, 540.

## [REFERENCES ARE TO PAGES.]

## DISHONOR—continued—

- of bill of exchange by non-acceptance, 186, 660.
- notice after, 194.
- protest after, 207.
- result of, 207, 661.
- twenty-four hours delay in accepting causes, 100.
- waiver of notice of, on whom binding, 211, 607.
- when occurs through non-payment, 194, 578.
- when by non-payment, 194, 578.

## DISHONORED BILL, 186, 654, 660, 661.

## DISHONOR, NOTICE OF, see also NOTICE OF DISHONOR.

- agent may give, 195, 590, 592.
- and presentment waived by waiver of protest, 211, 608.
- by whom given, 195, 590, 592.
- contents, 194, 593.
- delay in giving when excused, 202, 609.
- dispensing with notice of dishonor, 202, 609.
- dispensing with presentment for payment, 189, 576.
- dispensing with protest when allowed, 211, 608.
- effect of deposit in branch postoffice or letter box, 200, 601, 602.
- effect of miscarriage in mails, 200, 601, 602.
- effect on negotiability, 91.
- effect when given by or on behalf of holder, 203, 591.
- effect when given by or on behalf of party entitled to give notice, 203, 591..
- form of notice of, 194, 594.
- given by agent, 194, 590, 592.
- given by holder, 195, 590, 592.
- in case of death, 198, 596.
- may be sent through postoffice, 200, 594, 599.
- may be waived, 201, 605.
- meaning of term, 196, 197.
- must be given, 196, 586.
- place of sending, 199, 604.
- time allowed to one receiving, 199, 598, 603.
- time when given, 196, 604.
- timely receipt of, irregularly sent, 199, 604.
- to bankrupt or insolvent, 198, 598.
- to joint parties not partners, 197, 597.
- to whom given, 595.
- to whom must be given, 196, 586, 596.
- waived by waiver of protest, 211, 608.
- what amounts to, 194, 594.
- when dispensed with, 200, 609.
- when failure to give excused, 201, 609.
- when may be waived, 201, 605.
- when must be given, 196, 198, 586, 596.
- when need not be given to drawer, 200, 610.
- when need not be given to indorser, 200, 611.
- when sufficient in form, 194, 593, 601.
- when unnecessary, 200, 201, 605, 609, 611.

[REFERENCES ARE TO PAGES.]

**DISHONOR, NOTICE OF**—continued—

- where addressed, 199, 604.
- where parties reside in same place, 199, 598.
- where parties reside in different places, 199, 599.
- notice to partners, 198, 597.

**DISHONORED BILL**—

- acceptance of, 91, 654.

**DISSOLUTION OF PARTNERSHIP**—

- effect of, 39.
- when notice of necessary, 39.

**DISTURBANCES**—

- military and political, an excuse for non-presentment, etc., 202.

**DIVERSION**—

- accommodation paper, 146.
- amounts to, 146.
- effect of, 146.
- fraudulent, 146.

**DOCK RECEIPTS**—

- See WAREHOUSE RECEIPTS.

**DONEE**, see GIFT.**DOUBTFUL**—

- whether bill or note, 338, 339, 413.
- rules of construction, 338, 339, 413.

**DRAFT**—

- effect of, 264.
- liability of, parties to, 264.
- rights of parties to, 264.
- use, 264.

**DRAWEE**—

- alternative, 61, 643.
- and drawer same person or drawee fictitious or incapable of contracting bill treated as note, 61, 644.
- bankrupt or insolvent, presentment for acceptance to, 98.
- bill may be addressed to two or more, but not in alternative or succession, 61, 643.
- dead, absconded or fictitious, presentment for acceptance excused, 100, 660.
- death of, how bill of exchange presented for acceptance, 98, 100.
- destruction or retention of bill of exchange, 96, 652, 660.
- effect of omission of from bill of exchange, 60.
- fictitious, in bill of exchange, 61, 644.
- fictitious, or incapable, or absconded, effect on presentment and notice, 100, 576, 610, 611, 660.
- given twenty-four hours in which to accept, 100, 651.
- has twenty-four hours within which to accept or refuse, 100, 651.
- joint drawees, acceptance in case of, 98, 658.
- may be payee, 394.
- not bound until acceptance, 86.
- not liable unless he accepts or certifies, 86, 642, 687.

[REFERENCES ARE TO PAGES.]

**DRAWEE—continued—**

- of bills in a set, 70, 674.
- of bills of exchange, allowed twenty-four hours to accept, 100, 651.
- relation of, to bill before and after acceptance, 86.
- retaining or destroying bill liable as acceptor, 96, 652, 660.
- rights of, after acceptance, 89.
- time allowed in which to accept, 100, 651.
- when name of, may not appear, 60.
- when principal debtor, 87.
- where incapable of contracting, holder may treat bill as dishonored, 61, 644.
- without capacity to contract in bill of exchange, 61, 649.

**DRAWEEES—acceptance by part of, 92, 98.****DRAWEE IN CASE OF NEED—**

See REFEREE IN CASE OF NEED.

**DRAWER—may be payee, 394.**

- admission of, 140, 540.
- and drawee same person in bill of exchange, 61, 644.
- blanks for name of, 68, 403, 404, 405.
- contract of, 140, 184.
- discharged by failure to present, 194.
- discharged unless bill presented at maturity and notice of dishonor given, 184, 194.
- duty of care owed bank, 633.
- effect of qualified acceptance, 655.
- existence capacity and authority admitted by acceptor, 141, 541.
- liability if drunk, 31.
- liability of, 140, 540, 541.
- liability of, before and after acceptance, 140, 540.
- limiting liability of, 140, 540.
- may be payee, 394.
- may negative liability, 140, 540.
- must be given notice of non-acceptance, 197, 589.
- must be given notice of dishonor, 197, 589.
- nature of contract, 140, 184, 540.
- need not sign before acceptance, 653.
- need not record notice of dishonor, when, 201, 610.
- of check, certification releases, 239, 686.
- of check when discharged, 239, 686.
- of check, nature of liability, 239, 686.
- or maker described, 11.
- presentment for payment who not required to charge, 189, 574|
- presentment necessary to charge, 188, 563.
- re-issue by 217, 626.
- rights of, after acceptance, 89, 90.
- secondarily liable, 89, 90.
- when acceptance deemed to be for honor of, 101, 668.
- when discharged, 239, 686.
- when discharged by failure to protest, 194, 210.
- when discharged by qualified acceptance, 140.
- when discharged by failure to negotiate or present bill for acceptance, 184, 194.

## [REFERENCES ARE TO PAGES.]

## DRAWER—continued—

- when failure to present check discharges, 184, 194, 237.
- when liability accrues, 140.
- when notice to, not required, 200, 201, 610.
- when primary debtor, 87.
- when protest necessary to charge, 662.
- when unreasonable delay discharges, 237, 682.

## DRUNKEN PERSONS—

- contracts of, 31.
- degree of drunkenness sufficient to constitute valid defense, 31, 163.
- ratification of contract made while drunk, 32, 163.

## DRUNKENNESS—

- as a defense, 31, 163.

## DUE BILL—

- defined, 264.
- effect of, 265.
- form of, 264.
- where a note, 264.
- whether a note, 264.

## DUE COURSE—

- holder in, rights of, 149, 481, 518.
- holder in, what constitutes, 149, 484.
- payment when made in, 218.
- presumption as to holding in, 150.
- rights of holder in, descend to subsequent holder, 149, 523.

## DURESS—

- instrument or signature obtained by, 170.
- imprisonment, 179.
- in general a personal defense, 178.
- obtaining by, 170, 178, 502.
- when a personal defense, 171.
- when amounting to forgery, 170.

## DWELLING—

- presentation at, 100.

## E

## EFFECT—

- of alteration, 178, 223, 631.
- of instrument drawn or indorsed to a person as cashier, 471.
- of non-presentment for acceptance of bill of exchange, 97, 98, 186, 187, 657, 660.
- payment by party secondarily liable, 217.

## ELECTION—

- of holder to require something in lieu of money, 57, 388.
- to treat instrument as bill or note, 413, 644.

## ENDORSEE, see INDORSEE.

## ENDORSEMENT, see INDORSEMENT.

## ENDORSER, see INDORSER.

## [REFERENCES ARE TO PAGES.]

## ENTIRE FAILURE—

- of consideration, 81, 179, 444.
- parol evidence as to, 81, 179, 444.

## EPIDEMICS—

- existence of, as an excuse for non-presentment, etc., 202.

## EQUITABLE ASSIGNMENT—

- effect of bills and non-negotiable orders as, 134, 135.

## EQUITIES—

- as a defense, 173 *et seq.*
- assignee takes subject to, 134.
- bona fide holder takes discharged of, 150, 152.
- indorsee of overdue paper takes subject to what equities, 156, 157.

## EQUITY, COURT OF—

- restore altered paper, 177.

## ERASURE—

- of instrument written in pencil, 178.

## ESCROW—

- delivery in, 174, 339.
- delivery by custodian in violation of instructions, 62, 174.

ESSENTIAL REQUISITES OF NEGOTIABLE INSTRUMENTS, *see*

- FORMAL AND ESSENTIAL REQUISITES OF NEGOTIABLE INSTRUMENTS.
- request not sufficient, 370.

## ESTATE—

- instrument payable to, 35.

## ESTOPPEL—

- as to delivery, 370.
- in general, 31, 61, 115, 403, 405, 424, 643, 644.
- of maker, drawer or acceptor to deny existence of payee and capacity to endorse, 538, 540, 542.
- when operates against parties, 143.

EVIDENCE, *see also* ADMISSION; BURDEN OF PROOF; DECLARATIONS;  
PAROL EVIDENCE; PRESUMPTIONS.

- admissibility of parol evidence, 45.
- as to acceptance of bills, 339.
- as to ambiguous or omitted stipulations, 338.
- as to amount payable, 334.
- as to bills, 344.
- as to conditions, 341.
- as to consideration, 336.
- as to date, 333.
- as to delivery, 339.
- as to demand, 343.
- as to discharge, 343.
- as to duress, 45, 341.
- as to execution, 339.
- as to fraud and duress, 45, 341.
- as to interest, 336.
- as to interest where declaration does not mention interest, 336.
- as to meaning of certain terms, 345.



## [REFERENCES ARE TO PAGES.]

## EVIDENCE—continued—

- as to mistake, 45, 342.
- as to mode of payment, 335.
- as to notes, 344.
- as to notice, 344.
- as to parties, 337.
- as to particular characteristics, 332, 345.
- as to payment, 343.
- as to place of payment, 335.
- as to presentment, 343.
- as to protest, 344.
- as to a qualifying verbal agreement, 45.
- as to time, 332.
- as to transfer, 340.
- as to usury, 343.
- bill as evidence, 344.
- burden of proof, 330.
- burden of proof in general, 330.
- certificate of protest as, 344.
- competency of parties, 330.
- in general, 329.
- notary's certificate as, 207, 208.
- notes as evidence, 344.
- of agreement to pay interest, stub, 335.
- parol, 45.
- place of date prima facie evidence of maker's residence and place of business, 339.
- possession prima facie evidence of ownership, 266.
- presumptions in general, 329.
- protest exclusive of dishonor of foreign bill, 344.
- questions of, governed by *lex fori*, 227.
- rules as to ordinary contract apply, 329.
- seal and signature of notary, 204.
- to show agreement between indorsers, 143, 559.

## EXCHANGE—provision for, 52, 53, 377.

- instrument payable with, 52, 53.

## EXCHANGE BILLS OF—

- See BILLS OF EXCHANGE.

## EXCHANGE OF COMMERCIAL PAPER—

- as a consideration, 75.

## EXCUSE OF STEPS, see also DILIGENCE.

- for delay in presentment for payment, 191, 576.

## EXCUSES FOR NON-PRESENTMENT, PROTEST AND NOTICE—

- epidemics, 202.
- interdiction of commerce, 202.
- military disturbances, 202.
- overwhelming calamities, 202.
- political disturbances, 202.
- sudden death or illness of holder, 202.
- war, 202.
- when drawer has no right to require, 201.

[REFERENCES ARE TO PAGES.]

EXCUSES FOR NON-PRESENTMENT, PROTEST AND NOTICE—  
continued—

- when drawer or indorser has received funds to pay instrument or has received security or indemnity, 203.
- when presentment, protest and notice have been waived, 189.

EXECUTION—

- issuing, as extinguishment of other rights, 224.
- place of, what constitutes, 339.
- simultaneous, of several instruments, 338, 413.
- transfer by, 136.

EXECUTOR—

- as indorser of note, 34.
- as maker of note, 34.
- cannot bind estate by negotiable instrument, 34.
- individually bound, 34.
- indorsement after death, 34.
- may transfer instrument payable to order of deceased, 34.
- notice of dishonor by, 198, 199, 596.
- notice of dishonor to, 198, 199, 596.
- presentment for acceptance, 99.
- presentment for payment by, 193.
- presentment for payment to, 193.
- presentment and notice to, 573, 596, 660.
- signature by, 417, 472.

- EXHIBITION—of instrument, when necessary, 571.
- instrument, when presented, 190, 571.

EXPRESS ACCEPTANCE—

See ACCEPTANCE.

EXPRESS NOTICE—

See NOTICE.

EXTENSION OF TIME—

- as consideration or value, 73.
- contract for, must be enforceable, 275.
- effect to discharge surety if second party, 621.
- in general, 371.
- of payment, effect of, on party secondarily liable, 225, 621.
- reservation of right of recourse against secondary parties, 621.
- sufficient consideration, 73.
- to principal debtor, discharges indorser, etc., 275.

EXTINGUISHMENT—

- See DISCHARGE.
- by payment by accommodation party, 145.

F

FACULTATIVE INDORSEMENT, 122.

FAILURE OF CONSIDERATION, 444, 446.

See also CONSIDERATION.

FAILURE TO PRESENT—

- after disability removed, 192.
- effect on maker or acceptor, 194.

## [REFERENCES ARE TO PAGES.]

- FAILURE TO PRESENT**—continued—  
facts not in dispute, 192.  
where bank fails, 192.  
where facts disputed, 192.
- FAILURE TO STAMP**—  
See **STAMP**.
- FALSE REPRESENTATIONS**—  
See **FRAUD**.
- FEAR**—  
obtaining by, 150, 501.
- FEDERAL COURT**—how far bound by statute, 232, 233.  
rule in, 232, 233.  
rules of decision of, in respect to negotiable instruments, 232, 233.
- FEES ATTORNEYS'**, see **ATTORNEYS' FEES**.
- FELONIES**—  
compounding, illegal, 181.
- FEME COVERT**—  
See **MARRIED WOMEN**.
- FICTITIOUS DRAWEE**—  
in bill of exchange, 61, 644.  
presentment for acceptance excused, 100, 576, 610, 611, 660.
- FICTITIOUS PAYEE**—  
in general, 396, 397, 398.  
when drawer estopped to allege that payee is, 61.
- FICTITIOUS PARTIES**—  
drawee, notice excused, 100, 660.  
payee, instrument payable to bearer, 61.
- FICTITIOUS PERSON**—  
as drawee, 644.  
as payee, 395.  
instrument made payable to, 51, 395.  
presentment dispensed with where drawee is, 100, 660.
- FIDUCIARIES AS PARTIES**—  
See **EXECUTORS AND ADMINISTRATORS**; **GUARDIANS**; **TRUSTEES**.
- FIGURES**—  
change marginal, 52.  
conflict with writing, 52, 413.  
discrepancy between words and, 52, 413.  
effect of, 52, 413.  
in instrument, 413.  
office of, 413.
- FILLING BLANKS**—  
agent for, 67, 68.  
in general, 393, 394.  
in instrument, 68, 403, 404, 405.  
no authority to insert special agreement, 68.
- FINDER**—  
of certificate of stock, 261.

## [REFERENCES ARE TO PAGES.]

- FINDER**—continued—  
    payment to, 218.  
    whether recover, 156.
- FISCAL OFFICER**—  
    as payee or endorser, 471.  
    instrument payable to, 471.
- FORBEARANCE**—  
    to sue, as a consideration, 72, 73.
- FORCE**—  
    obtaining by, 150, 501.
- FOREIGN BILLS**, see also **BILLS IN A SET**—  
    defined, 44, 643.  
    must be protested, 210.  
    protest required, 210.
- FOREIGN BILLS OF EXCHANGE**—  
    See **BILLS OF EXCHANGE**.
- FOREIGN COIN**, 60.
- FOREIGN LAWS**—  
    courts will not take judicial notice of, 349.  
    in another state, 349.  
    proof of, 349, 350.
- FOREIGN MONEY**—  
    whether treated as money, 58, 59, 60.
- FOREIGN NOTE**—  
    when endorsed must be protested, 210.
- FORGED CHECK**—  
    liability of savings bank, 242.  
    liability on, 241.
- FORGER**—  
    of check, 241, 242.
- FORGERY**—  
    acceptance, no admission of indorser's signature, 170.  
    as a defense, 169.  
    as to rubber stamp, 424.  
    burden of proof, 401.  
    by alteration of amount, 169.  
    by bookkeeper, 423.  
    by carbon paper, 424.  
    defined, 169.  
    duty of depositor as to, 241 note.  
    estoppel to set up, 169, 422.  
    estoppel as to signature, 170.  
    failure to stamp, see **STAMP**.  
    impostor, 424.  
    intent to defraud, and uttering, essential, 169.  
    of names of drawer and payee, 170.  
    of indorsement, liability of drawee to drawer, 170.  
    of signature, 169, 422.

## [REFERENCES ARE TO PAGES.]

## FORGERY—continued—

- recovery of money paid on forged instrument, 170.
- signature confers no right, 169, 422.
- warranty against, 553, 555.
- when party estopped to allege forgery, 169, 422.
- wrong person but of same name, 424.

## FORM, see also FORMS OF CODE PLEADING; FORMS OF COMMON LAW PLEADING.

- acceptance, 88.
- bills in a set, 69.
- bill of exchange, 11.
- certification of check, 241.
- check, 11.
- common form of promissory note, 1, 5.
- no particular form required, 45.
- notice of protest, 205, 206, 207.
- of bill of exchange no particular form required, 44.
- of corporate signature, 41.
- of firm signature, 39.
- of indorsement, 116.
- of notice of dishonor, 194, 195.
- of partnership signature, 39.
- of signature by an agent, 38.
- promissory note, 1, 2, 5.
- protest, 205, 206, 207.
- simple form of promissory note, 1, 5.

## FORMAL AND ESSENTIAL REQUISITES OF NEGOTIABLE INSTRUMENTS—

- as to agreement controlling the operation, 64, 65.
- as to blanks, 67, 68.
- as to instrument bearing a seal, 68, 391.
- as to stamps, 67.
- as to style and material, 46.
- certain as to amount, stated in instrument, 52, 376.
- certainty of drawee, 45, 369.
- date, 369.
- enumerated, 44, 45.
- how written, ink, 47.
- how written, pencil, 47.
- in general, 43, 44.
- material on which written, 46, 47.
- must be certain as to amount, 52, 53, 54, 363, 376.
- must be certain as to place of payment, 55.
- must be certain as to time of payment, 54, 55.
- must be certainty as to engagement to pay, 51, 52.
- must be in writing, 45, 363.
- must be necessary parties, 60, 61, 62.
- must be payable in money, 56, 59, 363.
- must be payable to order or bearer, 50, 51, 363.
- must be promise or order to pay, 49, 363.
- no particular form required, 46, 47.
- of bill and note, 1.

## [REFERENCES ARE TO PAGES.]

## FORMAL AND ESSENTIAL REQUISITES OF NEGOTIABLE INSTRUMENTS—continued—

- payable on demand or at fixed time, 45, 363.
- signature, 47, 48, 49, 363.
- stamps, 67.
- the date, 47, 48.
- the delivery, 62.
- the several parts of a foreign bill called a set, 69, 70, 71.
- the signature, 48, 49, 363.
- to order or bearer, 50, 51.
- unconditional promise or order, 50, 51, 363, 381.
- whole instrument must be in writing, 46, 363.
- words of negotiability, 49, 50, 51.

## FORMS OF CODE PLEADING—

*Answers—*

- alteration, 327.
- denial of execution of instrument, 325.
- failure of consideration, 326.
- false representations, 327.
- general denial, 325.
- illegal consideration, 326.
- partial want of consideration, 325.
- payment, 327.
- that acceptance was for accommodation, 328.
- want of consideration, 325.
- without consideration as to indorsee, 325.

*Complaints on Bank Check—*

- drawer against drawee, 324.
- indorsee against indorser, 324.
- payee against drawee, 324.
- payee against drawer, 323.

*Complaints on Bill of Exchange—*

- drawer against acceptor on non-payment, 319.
- indorsee against acceptor, payable at particular place, 320.
- indorsee against acceptor on non-payment, 320.
- indorsee against drawer, demand and notice waived, 322.
- indorsee against drawer, excuse for non-presentment, no effects, 322.
- indorsee against drawer, indorsers and acceptors on inland bill of exchange, 320.
- indorsee against drawer, no funds in drawer's hands, failure to notify drawer, 321.
- indorsee against drawer on non-acceptance, 319.
- indorsee against drawer when payable at a certain place, 321.
- indorsee against indorser, non-payment by acceptor, 323.
- payee against acceptor on non-payment, 318.
- payee against drawer on non-acceptance, 318.

*Complaints on Promissory Note—*

- assignee of note by delivery against maker and assignor, 316.
- executor of payee on note against maker, 316.
- indorsee against maker, 316.
- indorsee against indorser, payable in another state, 317.
- indorsee against maker and indorsers, 317.

[REFERENCES ARE TO PAGES.]

## FORMS OF CODE PLEADING—continued—

- payee on note against maker, 313.
- payee on note against maker, excuse for not setting out copy of note, 315.
- payee on note against maker, for interest due, 314.
- payee on note against maker, lost note, 315.
- payee on note against maker, note providing for attorney's fee, 314.
- payee on note against maker, payable after sight, demand or notice, 315.
- payee on note against maker, whole amount due on failure to pay, 314.

## FORMS OF COMMON LAW PLEADING—

*Answers—*

- affidavit denying execution of instrument, 310.
- avermert of arbitration and award, 311.
- avermert of set-off, 311.
- plea, 309.
- plea and affidavit of merits, 310.
- plea of payment by services, 310.
- statute of limitations, 311.

*Declarations—*

- drawer of bill against acceptor, 308.
- indorsee on bill against indorser for non-acceptance, 309.
- indorsee on note against maker, 307.
- indorsee on note against payee or other indorsers, 307.
- on note by payee against maker, 306.
- payee on bill against drawer for non-acceptance, 308.

## FRAUD—

- a question of negligence, 175.
- as a defense, 175.
- as affected by negligence, 176.
- defense of, generally available only between immediate parties, 175.
- defined, 175.
- effect of, 175.
- fraudulently procuring signature is not forgery, 175.
- immaterial alteration fraudulently made, effect of, 175.
- in general, 502, 503.
- in negotiation in breach of faith, 175.
- instrument or signature obtained by, 175.
- material alteration fraudulently made, effect of, 178.
- memorandum easily detached, 178.
- negotiating by, gives good title, 142.
- obtaining by, 175.
- parol evidence as to, 45.
- when a good defense against a bona fide holder, 155.
- when court compels surrender or restrains negotiation of paper obtained by, 81.
- when price paid by purchaser conveys notice of, 153, 154.

FRAUDS, STATUTE OF, see STATUTE OF FRAUDS.

FRAUDULENT ALTERATION, see ALTERATION.

[REFERENCES ARE TO PAGES.]

**FRAUDULENT CHECK, 244.****FRAUDULENT DIVERSION—**

burden of proof, when shown, 146, 147.

**FUNDS—**

absence of, in drawee's hands as excuse for non-presentment, 189.

negotiable instruments must not be payable out of a particular, 55.  
particular, 55.**FURTHER NEGOTIATION—**

prohibition of 119, 120, 465.

**FUTURES, see GAMBLING, GAMING.**

bills and notes as to, 164.

**FUTURE TIME—**

determinable, what constitutes, 54.

fixed period after date or sight, 54, 55.

to pay at a particular place, 55.

## G

**GAMBLING—**

as a defense, 164.

**GAMBLING DEBT—**

instruments in payment, illegal, 164.

note given for, 164.

**GAMING—**

instrument obtained through, 164.

note given for, 164.

**GARNISHEE, 401.****GARNISHMENT—**

transfer by, 136.

**GENERAL ACCEPTANCE—**

form and effect of, 92, 654.

**GENERAL DOCTRINE—**

bona fide holder, 22.

consideration, 22.

equities, 23.

essentials, 23.

fraud set up between immediate parties, 25.

holder for value recover, 26.

holder without notice recover, 24.

illustration as to negotiable and non-negotiable instrument, 23.

imports a consideration, 22.

law of contracts controls as between immediate parties, 24.

negotiable instruments similar to money, 22, 25.

ordinary contract binding, 24.

rule as to forgery, 24.

rule as to non-negotiable instrument, 25.

rule as to real defense, 24.

**GENERAL INDORSER—**

liability of, 555, 556.



[REFERENCES ARE TO PAGES.]

## GENUINENESS—

- of signature of drawer, acceptor admits, 541, 542.
- warrant of, upon negotiation, 552, 553, 555.
- warranty of, by indorsement, 142.

## GEORGIA—

- Digest of Laws of, 714.

## GIFT—

- of donee's obligations, 74, 75.
- of note of third person, 179.
- promissory note as, 74, 75.
- whether instrument as, a good consideration, 179.

## GIVING TIME—

- effect of, on surety's liability, 275.

## GOLD CERTIFICATES, 265, 266.

## GOOD CONSIDERATION, 73.

## GOOD FAITH, see also NOTICE; HOLDER IN DUE COURSE.

- defined, 150.
- part value paid in, effect, 181.

## GOVERNMENT CHECKS, 398.

## GOVERNMENT STAMP, see STAMP.

## GRACE, DAYS OF, see also DAYS OF GRACE.

- number of days allowed, 708, 709.
- origin and nature, 66.
- presentment for payment, when last day of grace falls on Sunday or holiday, see COMPARATIVE TABLE, 66, 708, 709.
- what instruments entitled to, 66, 708, 709.
- whether abolished, 66, 580.

## GRATUITIES—

- as consideration, 74.

## GROSS NEGLIGENCE—

- See NEGLIGENCE.

## GUARANTOR—

- amount of recovery, 273.
- as indorser, 272.
- classes of remedies of, 272, 273.
- contract of, 111, 272, 273.
- difference between liability of, and of indorser and surety, 272, 273.
- distinguished from surety, 111.
- how discharged, 274.
- liability in case of insolvency, 272.
- liability upon a failure to give notice, 272.
- notice to, on default of principal, 272.
- obligation of, 267.
- plea of fraud as discharge, 274.
- remedy when he pays the debt, 273.
- upon dishonor must pay within a reasonable time, 272.
- when proceedings against principal are necessary, 273.

[REFERENCES ARE TO PAGES.]

**GUARANTY—**

- afterwards committed to writing, 270.
- alteration by addition, 177.
- as affected by statute of frauds, 270.
- by third party upon note after delivery, 269.
- by third party upon note before delivery, 270.
- conditional guaranty, 271.
- consideration, 269.
- contemporaneous, 270.
- defined, 267.
- distinguished from suretyship, 267, 268.
- guarantor's remedies, 273.
- how discharged, 274.
- may guarantor be sued jointly, 268.
- negotiability, 271.
- notice to guarantor of default, 272.
- on note, consideration presumed, 269.
- separate contract, 267.
- when consideration continuous, 270.
- whether assignable, 272.
- whether consideration must be in writing, 270.
- whether in writing, 270.
- whether in writing when direct, 270.
- whether release or extension of time to principal debtor discharges guarantor, 275.
- whether signature must be obtained, 268.
- whether negotiable, 271.

**GUARDIAN—**mention of on instrument as notice, 35.

**GUARDIANS—**

- as parties to negotiable instruments, 35.
- effect of words "as guardian," 35.

**H**

**HABITUAL DRUNKARD—**instruments by, 163.

**HOLDER, see also BONA FIDE HOLDER; HOLDER IN DUE COURSE; AND  
HOLDER FOR VALUE.**

- after holder, for value, 149, 155.
- after notice, 154.
- by assignment, subject to equities, 19.
- by fraud, 150.
- by indorsement, 19.
- de facto*, 142.
- defined, 345, 695.
- duty on non-acceptance of bill of exchange, 186, 661.
- effect of notice of dishonor when given by or on behalf of, 174, 591.
- for collection, 481.
- indorsee who re-acquires is, 527.
- of principal debtor discharges instrument, 223, 224, 615.
- may refuse to take qualified acceptance, 90, 655.
- not in due course, what defenses instrument subject to, 149, 523.

[REFERENCES ARE TO PAGES.]

**HOLDER—continued—**

notice of defect before full amount paid, 153, 500.  
 notice of dishonor given, 174, 591.  
 of bills in set, rights of, 70, 674.  
 of certified check, right to sue bank, 248.  
 of uncertified check has no recourse against bank, 248.  
 payment to, discharges instrument, 481.  
 principal debtor becoming, discharges instrument, 223, 224, 615.  
*prima facie a bona fide* holder, 149, 481, 527.  
 refusing payment *supra* protest, 220, 672.  
 renunciation of rights by, 225, 628.  
 rights of where bill dishonored by non-acceptance, 186, 661.  
 right of, to sue in own name, 225, 481.  
 rights of, on dishonor, 186, 661.  
 rights of, on refusal to accept bill of exchange, 186, 661.  
 striking out indorsements, 126, 127, 475.  
 upon dishonor for non-acceptance, 186, 661.  
 who is, 345, 695.

**HOLDER FOR VALUE, see also BONA FIDE HOLDER.**

bank by giving credit on deposit account, 151.  
 holder after, 155.  
 liability of accommodation party to, 145, 448.  
 lien holder as, 153, 442.  
 necessity of payment of value, 151.  
 person having lien is, 153.  
 pledgee, 441, 442.  
 value, what constitutes, 151, 432.  
 when lien on instrument protects lienor, 153, 442.  
 when paper transferred for antecedent debt, 152.  
 when person deemed, 151, 440.  
 where value has been given, 83.

**HOLDER IN DUE COURSE, see also DEFENSES; GOOD FAITH.**

cannot take under forged signature, 422.  
 corporation not to set up defense of *ultra vires*, 162.  
 delivery conclusively presumed, 408.  
 drunkenness as a defense, 31, 163.  
 explained, 149, 484.  
 for value, lienor is, 153.  
 for value under certain circumstances, 151.  
 has title free from defenses and defects of title, 149.  
 holder deriving title from, 149, 523.  
 holds instrument free from equities, 149.  
 in general, 484, 490.  
 instrument complete and regular, 149, 484.  
 instrument not overdue, 149.  
 lien holder is, 153.  
 may recover full amount, 149.  
 not affected by renunciation, 225, 628.  
 not subject to defenses of absence or failure of consideration, 444.  
 omission to give notice of non-acceptance does not prejudice rights  
 of subsequent, 203, 613.

## [REFERENCES ARE TO PAGES.]

**HOLDER IN DUE COURSE—continued—**

- of instrument payable on demand, 153, 498.
- presumption as to, 150.
- requisites to constitute, 149.
- right to sue, 481.
- rights of, 481, 518, 519.
- rights of, descend to subsequent holder, 149, 523.
- rights of one claiming under rights on warranties, 552, 555.
- rights on an altered instrument, 176, 631.
- rights of person claiming under holder in due course, 150.
- rules to determine who are, 149.
- taken in good faith and for value, 149, 484.
- taken without notice of infirmity, 149, 484.
- transfer of instrument for antecedent debt, 152.
- validity in hands of, 149, 484.
- what constitutes, 149, 484.
- what constitutes notice of equities, 154, 508.
- when burden of proof on holder, 150, 527.
- when burden on holder to prove that he took instrument in due course, 150, 527.
- when paper deemed overdue, 155, 498.
- when transferee without indorsement becomes, 476.
- where full payment is not made before notice, 153, 500.
- where interest is overdue, 156.
- where installment overdue, 156.
- where title of transferor defective, 153, 501.
- whether bank paying note of depositor is, 151.
- who, is, 484, 527, 531.
- who not deemed a, 149, 498, 527.

**HOLDER NOT IN DUE COURSE, 149, 498, 527.****HOLDER OF OFFICE FOR TIME BEING—**

- instrument payable to order of, 394.

**HOLDER WITHOUT NOTICE—**

- not payable to order of maker, 153.
- purchaser when notice of fraud, 155.

**HOLIDAY—**

- day following, 191, 581.
- in part, presentment of bill of exchange for acceptance on, 99, 186, 658, 659.
- instrument due on, 191, 581.
- presentment for payment when instrument falls due on, 191, 580.
- when day of maturity falls on, 191, 580.
- when last lay falls on a holiday, 191, 580.
- when day for doing act falls on, 191, 581.

**HONOR, see ACCEPTANCE FOR HONOR; ACCEPTOR FOR HONOR; PAYMENT FOR HONOR—**

- acceptance for, 100, 667.
- acceptance for, delay in presentment when excused, 103, 669.
- acceptor for, liability of, 100, 668.
- for nature of his agreement, 103, 668.

## [REFERENCES ARE TO PAGES.]

## HONOR—continued—

- how made, 100, 103, 220, 667.
- presentment to, for payment, how made, 103, 669.
- protest of bill, 103, 669.
- when may be made, 219, 220, 671.

## HONOR, PAYMENT FOR—

- declaration of intention, 219, 220, 671.
- effect of refusing to receive, 219, 220, 671.
- effect on subsequent parties, 219, 220, 671.
- how made, 219, 220, 671.
- rights of payor, 219, 220, 671.
- when may be made, 219, 220, 671.

## HOUR—

- at what hour of day presentment for payment should be made, 189, 191.

## I

## IDIOT—

- capacity, 30.

## IDIOTS, see also INSANE PERSONS.

## IDENTIFICATION OF HOLDER—

- indorsement for, 450.

## ILLEGAL CONSIDERATION—

- against whom a defense, 181.
- by what law legality of consideration determined, 166, 181.
- examples of, 180.
- obtaining for, 80, 180.

## ILLEGALITY—

- against public policy, 165.
- as a defense, 166.
- effect of the adoption of Negotiable Instruments Law, 165, 166.
- illustrations of, 166.
- immorality, 181.
- in violation of statute, 165.
- instrument obtained through, 166.
- of consideration, what constitutes, 165, 180.
- of contract, 164.
- wagers and gaming contracts, 166.
- warranty against by subsequent indorser, 143.
- when proven, burden of proof shifts, 181.
- whether real defense, 165.

## ILLEGAL STIPULATION—

- not validated, 388.

## ILLNESS—

- of agent, 201, 202.
- of holder, as excuse for non-presentment, 202.

## ILLITERACY—

- as ground for disregarding waiver, 606.

[REFERENCES ARE TO PAGES.]

## ILLUSTRATIONS, see also EXAMPLES—

- of equities, 25.
- of illegal consideration, 80, 81.
- of non-negotiable instrument, 25.
- of valuable consideration, 73, 74, 75.
- of written acceptance, 93, 94, 95.

IMBECILES, see also INSANE PERSONS—  
capacity, 30.IMMATERIAL ALTERATION, see also ALTERATION—  
effect of, 176, 177.  
illustrations of, 176, 177.IMMEDIATE PARTIES, see also PARTIES—  
consideration between, 77, 78.  
defenses admissible between, 158, 159.  
delivery necessary as between, 408.  
law of contracts controls, 24, 25.  
who are, 25.IMMORALITY—  
illegality of consideration, 181.

## IMPANELING JURY, 347.

IMPLIED ACCEPTANCE—  
what will amount to, 97.IMPLIED AUTHORITY—  
of agents, 35, 36.  
of corporations, 40, 41.  
of one partner to bind firm, 35, 36, 37.

## IMPLIED NOTICE, see NOTICE.

IMPERSONATION—  
fraudulent, of a named payee, 423, 424.  
fraudulent, of agent of the named payee, 396, 397, 398.IMPOSSIBILITY—  
as excuse for steps, 201, 202.IMPRISONMENT—  
to compel execution of paper, 178."IN HIS OWN RIGHT"—  
meaning, 214, 615.INCAPACITY, see also ALIEN ENEMIES; BANKRUPT; DRUNKARDS; INFANTS; INSANE PERSONS; LUNATICS; MARRIED WOMEN; SPENDTHRIFTS—  
defense of, good against bona fide holder, 29, 31, 158, 159, 160.  
defense of, 29, 31, 158.  
of married women, 32.

## INCAPACITY TO CONTRACT, see DEFENSES.

INCOME—  
instrument payable from, 372.

## [REFERENCES ARE TO PAGES.]

## INCOMPETENCY—

good faith contractor protected, 30.

## INCOMPETENT—

note of, for necessities, 30.

## INCOMPETENTS—

spendthrifts, 31, 32.

## INCOMPLETE BILL—

acceptance of, 88, 91, 653, 654.

## INCOMPLETE INSTRUMENT—

acceptance of, 88, 91, 653, 654.

in general, 62, 63, 408, 409.

negligence, 632.

not delivered, 407.

want of delivery of, a defense, 62, 63.

## INCORPORATION—

of mortgage or other instrument by reference, 372, 373.

## INDORSEE—

blanks for name of, 462.

cannot be two or more severally, 61.

cashier, payable to bank, 112.

for collection, 197, 341.

if two or more, all must indorse, 112.

in trust, 119, 120.

right conferred on by restrictive indorsement, 119, 120.

rights of, 134.

special, must indorse to transfer, 116.

under conditional indorsement, 119, 120.

under restrictive indorsement, 119, 120.

who agent of, 119, 120.

## INDORSEES—

joint, indorsement by, 470, 559.

## INDORSEMENT, see also INDORSEE; INDORSEMENT IN BLANK; INDORSER, etc.—

absolute and conditional indorsements, 117.

accommodation, by bank, 145n.

according to tenor, 115.

after transfer, effect of, 476-478.

after maturity, effect, 392-393.

allonge, 110.

blank made special, 117, 129.

bonds, 706.

by bank, how converted into special, 129, 469.

by bankrupt, 33.

by cashier or other fiscal officer, 112, 471.

by corporation or infant, 421.

by insane, 31.

by payee or indorsee where name misspelled, 112, 472.

by rubber stamp, 424, 456, 459.

by two or more payees or indorsers not partners, 112, 470.

## [REFERENCES ARE TO PAGES.]

## INDORSEMENT—continued—

- by whom made, 112, 115.
- by words of assignment, 459.
- by maker of note payable to own order, 676-679.
- by one of several executors, 556.
- by person of same name as true owner, 424.
- collateral security, 341.
- collection, 120, 197.
- compel when failure by mistake or neglect, 109.
- conditional, right of party liable, 117, 469.
- contract made by, 113.
- contract of insane binding on prior parties, 31, 32.
- date of, 125, 473.
- defined, 110, 695.
- delivery necessary, 108.
- detached paper not binding, 114.
- effect of, when negotiable by delivery, 144.
- facultative, 122.
- for collection, 465.
- for identification, 544.
- forged passes no title, 218.
- forms of, 116, 137.
- guaranty as, 111, 122.
- holder striking out, 127.
- how blank indorsement converted to special indorsement, 129.
- how differs from surety and guaranty, 111.
- how made, 458, 459.
- if essential to title must be proved, 459.
- infant, 29, 421.
- infant's right to disaffirm, 29.
- in full, 116.
- in representative capacity, 472.
- indorsee's name wrongfully designated, 472.
- in blank makes instrument payable to bearer, 117.
- irregular indorsements, 123.
- joint indorsement, 122.
- kinds of, 116, 461.
- liabilities created by, 115, 124.
- may be on separate paper, 110, 114.
- may insist on, 130, 476.
- meaning of term, 110, 695.
- methods of, absolute, 116, 117.
  - conditional, 116, 117, 469.
  - in blank, 116, 117.
  - in general, 116, 461.
  - irregular, 116, 123.
  - joint, 116, 122.
  - restrictive, 116, 463, 464.
  - special, 116, 462.
  - successive, 116, 123.
  - without recourse, 116, 121.



## [REFERENCES ARE TO PAGES.]

**INDORSEMENT—continued—**

- miscellaneous matters, 125-127.
- must be made by payee or subsequent holder, 123.
- must be of entire instrument, 114, 460.
- must be on instrument or allonge, 110, 114.
- must follow tenor of bill, 115.
- negotiation, 127.
- need not contain words of negotiability, 464.
- of a half interest, 115.
- of instrument payable to two or more, not partners, 112, 122, 470.
- of transferer not required after blank indorsement, 463.
- partial, 114, 460.
- "pay to any bank or banker," 464.
- place of an instrument immaterial, 111.
- presentment necessary to charge indorser, 189, 576, 577.
- presumed to have been affected before paper overdue, 125, 473.
- presumption as to place of, 125, 473.
- presumption as to time of, 125, 473.
- prior equities, 121.
- qualified, 121, 122, 467.
- qualified indorsement does not impair negotiable character of instrument, 127, 467.
- qualified indorsement does not throw suspicion on paper, 127, 467.
- required for negotiation of instrument payable to order, 108.
- requisite of, 114.
- restrictive, 119.
- restrictive indorsement prohibiting further negotiation, 119.
- restrictive indorsement constituting indorsee mere agent, 119, 463.
- restrictive indorsement vesting title in trust, 119, 463, 464.
- restrictive indorsement authorizes indorsee to receive payment, 119.
- restrictive indorsement authorizes indorsee to transfer his rights as indorsee, 119.
- restrictive indorsement authorizes indorsee to bring action, 119.
- restrictive rights conferred by, 119.
- right to strike out indorsement, 126, 475.
- rights of transferee, 115.
- separate paper, 110, 114.
- signature alone sufficient, 110, 458.
- special, 116, 462.
- special on instrument payable to bearer, 469.
- stamping of name, 110.
- striking out, 126, 475.
- striking out, effect of, 127, 475.
- successive indorsements, 123.
- to negotiate instrument payable to order, 108.
- transfer by, 109.
- transfer without, 109, 126, 476.
- warranty of title in case of qualified indorsement, 121.
- warranty where negotiation by qualified indorsement, 121.
- warranty by general indorsement, 113.
- when assignment and guaranty of payment becomes, 461.
- when name misspelled, 112, 472.

[REFERENCES ARE TO PAGES.]

- INDORSEMENT**—continued—  
 when obtained subsequent to date, 109.  
 when overdue, 52, 392.  
 when payable to bearer, none necessary, 110.  
 when sufficient, 110, 458.  
 where payee or indorsee wrongly designated, 472.  
 without recourse, 467, 468.
- INDORSEMENT—QUALIFIED**, 467-468.
- INDORSEMENT IN BLANK**—  
 defined, 117.  
 effect of, 117.  
 equals an assignment, 130.  
 in general, 117.  
 to whom payable, 217, 218.
- INDORSEMENT IN FULL**—  
 defined, 116.  
 effect of, 116.
- INDORSEMENT, RESTRICTIVE**—  
 defined, 119.  
 for benefit of a third person, 463-465.  
 not revoked by indorser's death, 465.  
 passes legal title and power to sue, 119.  
 rights of restricted indorsee, 119.  
 warranty by, 553.
- INDORSEMENT WITHOUT RECOURSE**—  
 effect of, 121.  
 in general, 121.  
 liabilities created by, 121.
- INDORSER**, see also **INDORSEMENT, ETC.**—  
 accommodation, liability of, 145, 448.  
 accommodation, presented for payment to, 189, 575.  
 addition of place of residence not alteration, 637.  
 admits capacity of prior party, 142.  
 agent of indorsee, 120.  
 as guarantor, 272.  
 as to title, 142.  
 by delivery, 143.  
 contract of, 142.  
 difference between assignor and, 133.  
 discharged by failure to present, 194.  
 doubt as to whether signature is that of, 48, 49, 413.  
 effect of qualified acceptance, 655, 656.  
 estopped to deny validity, 143.  
 how discharged, 475, 476.  
 in blank, liability of, 128.  
 indorsee made agent of, 120.  
 in representative capacity, 472.  
 irregular accommodation, 124, 548.  
 irregular, liability of, 124, 548.  
 irregular, liability under, 124, 548.

[REFERENCES ARE TO PAGES.]

## INDORSER—continued—

- joint and successive indorsers, 143.
- law controlling liability, 231.
- liable in order in which he indorses, 143.
- liability of general indorser, 142.
- liability, if drunk, 31, 32.
- liability of, 142, 555, 556.
- liability of, on bill drawn in set, 70, 673, 674.
- liability of, where paper negotiable by delivery, 143, 555.
- liability for indorsing parts of bills in sets, 673, 674.
- liability upon dishonor by non-acceptance, 661.
- liability of unqualified, 143.
- liability where paper negotiable by delivery, 559.
- may not set up forgery, 170.
- must be given notice of dishonor, 184, 196, 197.
- nature of contract, 142 et seq.
- of check, certification releases, 239, 248.
- of check, liability, 235.
- of check, when discharged by failure to present, 236, 237.
- of overdue paper, 196, 197.
- order of liability, evidence as to, 559, 560.
- parol evidence to vary liability of, 143.
- payment by does not discharge instrument, 626-628.
- presumption as to second, 124.
- prima facie liable in order of indorsement, 143, 559.
- qualified, liability of, 144, 552.
- time limit in which to give notice to antecedent parties, 203.
- to whom warranty runs, 143.
- unqualified liability of, 143, 555.
- warranties by, 143.
- warrants that instrument is genuine, 143.
- warrants that instrument will be accepted or paid, 143.
- warrants the competency of parties, 143.
- when certification of check discharges, 686, 687.
- when discharged, 225, 621.
- when discharged by failure to protest, 178.
- when discharged by qualified acceptance, 91, 655.
- when discharged by failure to negotiate or present bill of acceptance, 658.
- when held primary party, 698.
- when liability accrues, 143.
- when need not receive notice of dishonor, 201, 611.
- when notice of dishonor required to charge, 586-589.
- when notice to unnecessary, 201, 611.
- when person deemed, 544-546.
- when not necessary, 575, 576.
- when presentment for payment necessary to charge, 563-566.
- when protest necessary to charge, 662, 663.
- when signer deemed, 110, 111, 544.
- whether liable if holder has collateral securities, 467.
- whether discharged by collateral acceptance, or acceptance by destruction, or refusal to return, 652.

## [REFERENCES ARE TO PAGES.]

## INDORSER—continued—

- without recourse, liability of, 143.
- without recourse, warranties of, 144.

## INDORSER, ANOMALOUS OR IRREGULAR—

- liability of, 548-552.

## INDORSER, QUALIFIED—

- liability of, 552-555.

## INFANCY, see also INFANTS—

- as a defense, 161.

## INFANTS—

- acceptor admits capacity to draw, 29.
- acceptor estopped, 161.
- cannot bind themselves on negotiable instrument, 28.
- capacity, 28.
- capacity to bind themselves, 28.
- capacity to enforce instrument, 28.
- caution advised, 29.
- contracts of, generally voidable, 28.
- defense of infancy good against bona fide holder, 29.
- indorsement by, 29.
- indorsement or assignment by, 29, 421.
- indorsement passes property, 29.
- indorsement voidable, 29.
- may be payee, 28.
- may bind themselves for necessities, 28.
- may disaffirm, 29, 422.
- may transfer by indorsement, 29.
- negotiation of instrument, 29.
- ratification by adult of negotiable instrument executed when an infant, 28.
- right to disaffirm indorsement, 29.
- statutes governing ratification, 29.
- verbal ratification by, 29.
- voidability of contract, 28.
- when maker or acceptor estopped to deny capacity, 29.

## INFIRMITY—

- in instrument, notice of what constitutes, 154, 508.

## INITIALS—

- sufficient as signature, 48.

## INK—

- several kinds of, on instrument, 404.
- signature in, preferable but not necessary, 47, 48.

## INLAND BILLS OF EXCHANGE, see also BILLS OF EXCHANGE—

- defined, 44, 643.
- necessity for protest, 210, 211.
- what treated as, 44, 643.

## INNOCENT HOLDER FOR VALUE, see BONA FIDE HOLDER; HOLDER FOR VALUE—

- in general, 24.
- rights against lunatic accommodation party, 31, 32.

## [REFERENCES ARE TO PAGES.]

## INSANE PERSONS, see also LUNATICS—

- as payee may compel payment, 31.
- as payee may compel return of consideration, 31.
- as payee may indorse, 31.
- bill of, for necessities, 30.
- committee appointed, effect on contracts, 30.
- contracts of, for necessities valid, 30.
- guardian appointed, effect on contracts, 30.
- ignorance of incapacity, effect of, 30.
- may be payee, 31.
- note of, for necessities, 30.
- one contracting with in good faith, 30.
- sanity presumed, 31.
- what degree of incapacity suffices to render contract void, 30.

## INSANITY, see also INCOMPETENT PERSONS; INSANE PERSONS—

- effect of undue advantage, 30.
- good defense against bona fide holder, 31, 163.
- is a real defense, 31, 163.
- when known, contract void, 31.

## INSECURE—

- notes payable when holder deems himself, 386.

## INSOLVENCY, see INSOLVENT—

- effect on presentment and notice of dishonor, 598.
- protest for better security, 665, 666.

## INSOLVENT—

- as payee, 33.
- drawee, presentment for acceptance to, 98, 658.
- notice of dishonor to, 198, 598.

## INSTALLMENTS—

- effect of want of notice of unpaid installments on liability for later, 587.
- instruments payable in, when deemed overdue, 156.
- overdue renders the whole due, 156.
- payment in, does not affect negotiability, 54, 377.

## INSTRUMENT, see also NEGOTIABLE INSTRUMENT; LOST AND DESTROYED.

- ETC.—
- defined, 695.
- given for necessities, 30.
- indorsed for discount, 410.
- made prior to negotiable instruments law, rules of construction, 339.
- undated, date may be inserted, 47, 402.
- when issued, 61.
- when negotiated, 17.

## INSURANCE—

- instruments for payment of losses, 383.

## INSUFFICIENT TIME—

- when may be pleaded as excuse for non-presentment, 186, 659.

## INTENT—

- as to cancellation, 220, 613.

## [REFERENCES ARE TO PAGES.]

## INTENT—continued—

- as to delivery, 62.
- burden of proof, 221, 630.

## INTEREST—

- alteration as to, 637-639.
- blanks in provision for, 404.
- compound not allowed, 167.
- conflict of laws, 168.
- date from which it runs, 413, 415.
- default of as dishonor and notice of equities, 489.
- does not make sum uncertain, 376-381.
- from when does it run, date being omitted, 47, 338, 413.
- if not paid entire sum due, 54, 157.
- in advance not usury, 167.
- in general, 370.
- laws of, tabulated by states, 708, 709.
- legal rate tabulated by states, 708, 709.
- limit under contract, tabulated by states, 708, 709.
- paid, 53.
- past due does not render the whole due, 157.
- penalty for usury tabulated by states, 708, 709.
- provision for increase of, of instrument dishonored, 378.
- rate in blank, 404.
- rate recovered in pledged instrument, 442.
- recovery if not yet accrued after default of installment, 377.
- usurious, 231.
- what law governs payment of, 231.
- when begins to run, 53.
- when no rate specified, 53.
- whether paper deemed overdue when installment of remains un-

## INTERMARRIAGE, 224.

## INTERPRETATION—

- governed by *lex loci contractus*, 227.
- of Negotiable Instruments Law, 692-694.

## INTOXICATION, see also DRUNKEN PERSON—

- as a defense against *bona fide* holder, 163n.
- in general, 504.

## INURE, 101, 142.

## IRREGULAR INDORSEMENT—

- conflict of decisions as to, 124.
- example of, 123.
- liability created by, 123, 124.
- liability of one not payee writing his name on paper before delivery to payee, 123, 124.
- liability under, 124, 548.
- meaning of term, 123 et seq.
- parol evidence of intention admissible between intermediate parties, 125.
- whether parol evidence of intention admissible between remote parties 125.

## [REFERENCES ARE TO PAGES.]

## IRREGULAR INDORSER, see also ANOMALOUS INDORSER—

accommodation, 124.

liability of, 548, 550.

## IRREGULARITY—

sent notice of dishonor, timely receipt of, 199, 604.

## ISSUE—

defined, 695.

of bills of credit by bank, 265.

of execution as extinguishment of other rights, 224.

of overdue paper, 52, 392.

## J

## JOINT AND SEVERAL—

credit, 249.

instruments, 61.

liability, 62.

two or more signing "I promise to pay," 413.

## JOINT DEBTORS—

presentment for payment to, 197, 198, 597.

## JOINT DEPOSIT, 249.

## JOINT DRAWEES—

allowed, 643.

if drawn on firm, may be accepted by one partner in firm name, 98, 658.

if not partners, all must accept, 197, 198, 597.

in general, 61.

## JOINT INDORSEES—

indorsement by, 470, 559.

## JOINT INDORSEMENT, 122.

## JOINT INSTRUMENT, 61.

## JOINT MAKERS—

whether defense of one is available for others, 504.

## JOINT OBLIGORS—

presentment to when not partners, 193, 658.

## JOINT PARTIES—

consideration moving to one, 428.

liability of, 559, 560.

not partners, notice of dishonor to, 197, 198, 597.

presentment to, 574.

suits by, 268.

two or more persons signing "I promise to pay," 413.

## JOINT PAYEES, 470, 559—

authorizing confession of, does not affect negotiability, 57, 388.

liability of, 143, 559.

## JUDGE—

questions for, see JURY.

## [REFERENCES ARE TO PAGES.]

## JUDGMENT—

- against maker, dispenses with presentment to charge indorser after maturity, 610.
- authorizing confession of, does not render instrument non-negotiable, 57, 388.
- extinguishes bill or note, 224.
- in general, 352.

## JUDICIAL NOTICE—

- courts will not take, of laws of another state or country, 349.
- of seal of notary public, 351.
- reasonable business hours, 569.

## JURISDICTION OF JUSTICES—

- amount, laws tabulated by states, 711 et seq.

## JURY, 347, 348—

- and judge, functions of, as to reasonable time, 700.
- interpretation of findings as to holder in due course, 486.

## K

KINDS OF COMMERCIAL PAPER, 258.

KINDS OF INDORSEMENT, 116, 461.

## KNOWLEDGE—

- actual, of defect or infirmity, 153, 154, 500, 508.
- of bank of general contents, 241.
- of signature by bank, 241.
- of solvency of prior parties, 154.
- to agent is knowledge to principal, 154.

## L

LADING, BILLS OF, see BILLS OF LADING.

LAW, see also CONFLICT OF LAW—

- conflict of, 227 et seq.
- operation of, may discharge instrument, 224.

LAW IN GEORGIA, 714, 715, 716, 717, 718.

## LAW MERCHANT—

- additions to, 14.
- administered as customs, 14.
- administered by King's Court of Common Law, 14.
- as a custom, 18.
- code of rules, 13.
- codified, 15.
- codified in California, 15.
- codified in England, 15.
- codified in France, 15.
- codified in United States, 15.
- court at the fairs, 14.



## [REFERENCES ARE TO PAGES.]

## LAW MERCHANT—continued—

- custom or usage, 13.
- declared law of land, 14.
- defined, 13.
- differs from common law, 13.
- differs from equity and admiralty, 13.
- engrafted on common law, 18.
- governs cases not provided for, 703.
- meaning of term, 13.
- negotiability in, defined, 17.
- negotiable instruments law, 15, 16.
- not part of law of England at first, 13.
- object of, 13.
- origin, 14.
- origin of bill of exchange under, 15.
- origin of promissory note under, 15.
- principles of, when applied by Federal courts, 232, 233.
- rules of, to govern, 339, 703.
- second stage of development, 14.
- stages of development, 13.
- system of law, 13.
- third stage of development, 14.
- unwritten law merchant, 15.
- when to govern, 339, 703.

## LAW OF FORUM, see Lex Fori.

## LAW OF PLACE—

- demand, notice, protest, 232.
- governing validity, etc., 228, 229.
- indorsement, effect and enforcement, 231, 232.
- liability of acceptor, 230.
- liability of indorser and drawer, 227-233.
- question of negotiability, 228.
- question of validity, 228, 229.
- requisites as to form and execution, 231.
- validity of indorsement, 231, 232.

## LEGAL HOLIDAYS—

- presentment for payment when instrument falls due on, 191, 580.

## LEGAL TENDER—

- defined, 59.
- instrument payable in, 59.
- what constitutes, 59.
- what is, 59.
- whether bank note is, 265, 266.
- whether gold or silver certificates are, 265, 266.

## LEGAL TITLE, see TITLE.

## LETTER BOX—

- effect of deposit of notice of dishonor in, 200, 601, 602.

## LETTERS OF CREDIT—

- defined, 265.
- use of, 265.

## [REFERENCES ARE TO PAGES.]

## LETTERS OF CREDIT—continued—

- when addressed generally, 265.
- when addressed to one person, 265.

## LEX FORI—

- determines in whose name suit is to be brought, 227 et seq.
- when controls, 227 et seq.

## LEX LOCI CONTRACTUS—

- governs as to validity, 230, 231.
- when is, 230, 231.

## LEX LOCI SOLUTIONIS—

- when governs, 231.

## LIABILITY, see also ACCEPTOR; AGENT; DRAWER, ETC.—

- agent, 36, 417.
- by delivery, 143, 559.
- limiting drawer's, 140, 540.
- of acceptor, 141, 541.
- of acceptor for honor, 100.
- of acceptor of bill drawn in set, 141.
- of accommodation party, 145, 448.
- of administrator, 36.
- of agent or broker, 147, 561.
- of agent, when agency is not disclosed, see AGENT.
- of bank to agent of undisclosed principal, 250.
- of bank for payment of forged check, 241n.
- of bank in tort, 250.
- of broker or agent on negotiation without indorsement, 144, 561.
- of concealed surety, 272, 273.
- of dormant partner, 39.
- of drawee retaining or destroying bill, 96, 652.
- of drawer, 140, 540.
- of drawer on memorandum check, 242, 243.
- of executor, 36.
- of guardian, 36.
- of indorser, when conflict of laws, 227, 233.
- of indorser, when spendthrift, 32.
- of indorser, where paper negotiable by delivery, 143, 559.
- of indorser's, on bill of exchange, drawn in set, 70, 673.
- of indorser's prima facie, that of order of indorsement, 143, 559.
- of irregular indorser, 124, 548.
- of maker, 139, 538.
- of negotiator, by delivery, 144, 559, 561.
- of officers of government, 38.
- of officers of public corporations, 38.
- of parties generally, see ACCEPTOR; DRAWER; INDORSER; MAKER, ETC.
- of partners after dissolution, 39.
- of partners on accommodation paper, 39.
- of partnership on firm notes, see PARTNERS.
- of person whose name is forged, 241n.
- of principal for acts of agent, 35-37.
- of public officers, 38.
- of secret partner, 39.

## [REFERENCES ARE TO PAGES.]

## LIABILITY—continued—

- of secretary, 36.
- of signing by trade or assumed name, 49, 416.
- of silent partner, 39.
- of spendthrift, 32.
- of transferor by delivery only, 552, 553.
- of trustee, 36.
- order in which indorsers liable, 143.
- primary, 139, 697.
- qualified indorser, 144, 552, 553.
- secondary, 139, 697.
- under assumed name, 49, 416.
- under trade name, 49, 416.
- unqualified indorser, 143.
- without recourse, 144.
- where paper negotiated by delivery only, 552.

## LIBERTY BONDS—

- bad faith purchase, 263.
- liability of bank for theft, 264.
- negotiability, 263.
- payable to bearer, 263.
- stolen, 263.

## LIEN—

- extent of recovery by holder, 153, 442.
- on instrument constitutes holder for value, 152, 442.
- on instrument makes one a bona fide holder, 153, 442.
- on note, 442, 443.

## LIEN HOLDER—

- amount of recovery, 442, 443.
- amount of recovery by transferee from, 442, 443.
- is holder for value, 153, 442.
- maker as, whether discharged, 616.

## LIENOR—

- having lien on instrument a holder for value, 153, 442.
- holder for value, 153, 442.

## LIMITATIONS OF ACTIONS, see STATUTE OF LIMITATIONS.

## LIMITATIONS, STATUTE OF, see STATUTE OF LIMITATIONS.

## LOST AND DESTROYED NEGOTIABLE INSTRUMENTS—

- burden of proof as to holder of, 256.
- contents of, how shown, 256.
- copy as evidence, 255.
- demand, protest and notice, 257.
- demand, protest and notice not excused by loss, 257.
- diligence of owner upon discovery, 253.
- form of indemnity bond, 254.
- indemnity bond, 254.
- indemnity rule, 254.
- in general, 253.
- owner's diligence, 253.
- party liable not discharged, 254.

## [REFERENCES ARE TO PAGES.]

LOST AND DESTROYED NEGOTIABLE INSTRUMENTS—  
continued—

- protest, presentment and notice, 666.
- replevin of, 253.
- suit upon, 256.
- title to, 253.

## LOST OR STOLEN, 173.

## LOVE AND AFFECTION—

- as consideration, 74.

## LUNATIC, see also INSANE; INSANITY; INCOMPETENT; CAPACITY—

- capacity of, 30.
- effect of undue advantage, 31.

## M

## MAIL—

- deposit in completes delivery, 62.
- deposit in mail chute, 602.
- miscarriage in effect of, 200, 601, 602.
- notice of dishonor may be sent by, 200, 594, 599, 601.

## MAILING—

- is delivery, 62, 695.

## MAKER, see also PARTIES, ETC.—

- admits, 139, 538.
- admits capacity to contract, 139.
- admits payee owner, 139.
- bound without presentment, 193.
- buying instrument when discharges, 182.
- by what law liability of, governed, 230.
- defense as surety, see SURETY.
- estopped to deny capacity of payee, 28, 31.
- estopped to deny insane payee's capacity, 31.
- if surety, rights against co-maker, 618.
- if surety, not entitled to notice of dishonor, 587.
- liable to indorsee of insane payee, 30, 31.
- liability, 538, 539.
- liability, if drunk, 31, 32.
- liability of, 139, 538.
- liability of anomalous indorser to, 548, 550.
- liability and admissions of, 139, 538.
- may be payee, 394.
- nature of contract entered into by, 139, 538.
- note to order of not complete until indorsed, 676.
- possession by, presumption as to payment, 224.
- presentment for payment not necessary to charge, 563, 564.
- subject to *lex loci contractu*, 230.
- surrender of note to, 616.
- theft of note, 695.

## MAKERS—

- joint and several, 413.

## [REFERENCES ARE TO PAGES.]

## MAKER OR ACCEPTOR—

estopped to deny capacity of infant, 28, 31.

## MAKER OR DRAWER—

described, 5.

## MAKER OR INDORSER—

doubt as to whether signature is that of, 338, 339, 413.

## MANAGER OF CORPORATION—

power to issue negotiable paper, 40.

## MARGINAL FIGURES—

discrepancy, words to control, 3, 52.

effect of, 413.

when may be changed, 52.

## MARGINAL NOTATIONS, 386, 400.

## MARK—

as a signature, 48.

## MARRIED WOMEN, see also COVERTURE; DEFENSES—

accommodation contract by, 451.

as surety, 33, 162.

capacity of, 32, 162.

conflict of laws, 32.

coverture, defense of good against bona fide holder, 162.

incapacity of to contract at common law, 32, 162.

indorsement by, 422.

marital rights as consideration, 432.

modern statutes as to, 32.

statutory changes as to contractual powers of, 32.

whether contracts enforceable, laws tabulated by states, 711, et seq.

## MARRY—

agreement to, as a consideration, 75.

## MATERIAL ALTERATION, see also ALTERATION.

examples of, 176.

what constitutes, 637, 638.

## MATERIAL OF INSTRUMENT—

cloth, 46.

leather, 46.

parchment, 46.

## MATURITY, see also OVERDUE PAPER—

action may not be begun on day of, 582.

"after sight" bill accepted for honor, 103, 669.

instrument payable "on or before," 385.

instrument not overdue on day of, 486.

mistake as to, 606.

notice of dishonor may be given on day of, 598.

time of, 580, 582.

whether dishonor to postpone payment till late on day of, 572.

## MAXIMUM—

memorandum as to limit of amount of check, 632.

[REFERENCES ARE TO PAGES.]

**MEDIUM OF PAYMENT—**

- alteration of, 636, 637.
- payment must be in money, 56-60.

**MEMORANDA—**

- in general, 64.
- on instrument, 64.

**MEMORANDUM—**

- constructive notice, 64.
- limiting liability of drawer, 540.
- of maximum amount of check, 632.
- on face or back of instrument, 64.
- to show liability of one who signs on back, 545.
- whether part of instrument, 65.
- written contemporaneously, 65, 118.

**MEMORANDUM CHECK—**

- in general, 242, 243.
- liability of drawer, 242, 243.

**MERCHANDISE—**

- not equivalent to money, 56.

**MESSENGER—**

- of bank, 350.

**MILITARY DISTURBANCES—**

- as excuse for non-presentment, etc., 202.

**MINOR, see INFANCY; INFANTS.**

**MISCARRIAGE IN MAILS—**

- effect of, 200, 601.

**MISDESCRIPTION—**

- in notice of dishonor, 195.
- when does not vitiate notice, 195.

**MISREPRESENTATION—**

- liability for, 422.

**MISSPELLING—**

- of payee's or indorsee's name, 472.

**MISTAKE—**

- in certification of check, 689.
- in date of maturity, 606.
- when failure to indorse through, 109.
- where instrument executed under rights of bona fide holder, 175, 176.

**MONEY—**

- act in addition to payment of, 388.
- alteration of medium of payment, 636, 637.
- current, designation of particular kind of, does not affect negotiability, 59, 391.
- foreign instrument payable in, 59.
- in alternative, 56.
- instrument payable in particular kind of, 59
- meaning of money, current money, current funds, currency and effect, on negotiability, 59.

## [REFERENCES ARE TO PAGES.]

## MONEY—continued—

- negotiable instrument must be payable in, 56, 369, 391, 646.
- of foreign country, 59.
- payment must be paid in, 56, 218.
- proceeds of fraudulent instrument, 433.
- what term includes, 59.

## MORAL OBLIGATIONS—

- not sufficient as consideration, 75.

## MORTGAGE STIPULATION—

- effect of, 370, 371, 372, 373.

## MUNICIPAL BONDS—

- statute applies to, see COUPON BONDS.

## MUNICIPAL CORPORATIONS—

- fiscal officer of, as payee of indorsee, 471.
- power to execute negotiable paper, 41,
- power to execute negotiable instruments, 41.
- securities of, not warranted upon negotiation, 553.
- unauthorized issue or sale of securities, 510, 511, 616.

## MUNICIPAL WARRANTS, 372.

## MUTUAL AGREEMENT—

- as to ante-dating, 47.
- as to post-dating, 47.

## N

## NAME—

- how indorse when misspelled, 112, 472.
- of holder misspelled, indorsement by, 112, 472.
- of payee or indorsee wrongly designated, 472.
- signing in assumed or trade, 415.

## NECESSARIES—

- bill for, 30.
- note for, 30.
- note given for by infant, 161.

## NECESSARY PARTIES, see also PARTIES, ETC.—

- name of drawee must appear, 60.
- name of maker must appear, 60.
- should be set out, 60.

## NEED—

- case of, 61.

## NEGLIGENCE—

- effect of, on bona fides, 175, 176.
- failure to discover or report forgery, 424.
- failure to indorse through, 109.
- fraud, a question of, 175, 176.
- in collecting instrument, 423.
- in custody of instrument signed in blank, 633.
- in facilitating forgery, 424.
- in facilitating detachment of note from contract, 632.

## [REFERENCES ARE TO PAGES.]

## NEGLIGENCE—continued—

- in getting intoxicated, 504.
- in leaving open spaces on instrument which facilitates raising, etc.,  
633.
- in mailing instrument to wrong person of same name as payee, 424.
- in not ascertaining nature of instrument signed, 502.
- in paying instrument without requiring its return, 538.
- in purchase as notice of equities, 508-512.
- leaving room for alteration, by negligent execution, renders party  
liable to bona fide holder, 178.
- of drawee in disregarding countermand, bars recovery of payment  
on forged indorsement, 424.
- of holder whether liable to refund to drawee if drawer's signature  
forged, 556.
- sending check to drawee for collection, 682.
- when contributes to negotiation, 178.

## NEGOTIABILITY—

- additional provisions not affecting, 56, 57, 388.
- all instruments originally non-negotiable, 17.
- conflict of laws as to, 228, 229.
- continuation of, 18, 127, 474.
- defined, 17.
- designation of particular kind of current money, does not affect,  
58, 391.
- distinguished from assignability, 18.
- effect on, of restrictive indorsement, 17, 382.
- effect on, of instrument discharged by payment, 17.
- meaning of term, 17.
- necessity of promise to pay money, 19.
- not affected by contingency in mortgage, 371.
- not necessary that terms follow statute, 400.
- omission of place where drawn or payable does not affect, 46, 56,  
68, 391.
- omission of value, recital does not affect, 44 et seq.
- origin of, 18.
- pleading must allege, 370.
- provision authorizing sale of collateral, does not affect, 57, 388.
- provision for discount, 373.
- provisions in instrument which impair, 381, 388.
- provisions in instrument which do not impair, 367, 391.
- provisions of title remaining in vendor, 383.
- purpose of, 20.
- requisites of, 43, 44, 369.
- rules as to, 19.
- seal does not affect, 68, 391.
- words of, alteration, 637.
- words of, necessary, 369.
- words of, not required in indorsement, 463.
- words used to denote, 19.
- what law determines, 228, 229.



[REFERENCES ARE TO PAGES.]

## NEGOTIABILITY OF PROMISSORY NOTES, see also PROMISSORY

## NOTES—

- development of modern times, 15.
- opposed by common law judges, 15.

## NEGOTIABLE—

- distinguished from non-negotiable, 19.
- in origin continues until restricted or discharged, 18.
- order on or promise to pay out of particular fund not, 55, 381.
- paper, 18.

## NEGOTIABLE BONDS—

- how made non-negotiable, 263, 706.
- indorsement, 262, 263, 706.
- made non-negotiable, 262, 263, 706.
- statement thereon, 262, 263, 706.

## NEGOTIABLE BY LAW MERCHANT—

- importance of knowing whether, 23.

## NEGOTIABLE INSTRUMENT—

- continues negotiable until restrictively indorsed or discharged, 474.
- constitutes value, 433.
- formal requisites, 369, 395.
- "instrument" means, 695.

## NEGOTIABLE INSTRUMENTS, see also BILLS OF EXCHANGE; PROMISSORY NOTES; COUPON BONDS; MUNICIPAL BONDS; BANK BILL or NOTES; CERTIFICATES OF DEPOSIT, ETC.

- bearing seal, 391.
- designation of particular kind of current money, 391.
- earliest form of, 15.
- form of, 1, 11.
- how discharged, 214 et seq, 615.
- imports, consideration, 64, 77.
- in hands of receiver, 136.
- indication of particular form does not render non-negotiable, 381.
- instrument payable on contingency not negotiable, 385.
- instrument continues negotiable until discharged or restrictively indorsed, 474.
- must contain unconditional promise, 369.
- must be for payment of sum certain, 369.
- must be for payment of money only, 369.
- must be in writing, 369.
- must be signed by maker or drawer, 369.
- must be payable on demand or at determinable future time, 369.
- must be payable to order or bearer, 369.
- not dated, 391.
- not specifying value given, 391.
- not specifying place where drawn, 391.
- not specifying place where payable, 391.
- option to require something in lieu of money, 388.
- omissions not affecting, 391.
- order to pay out of particular funds not negotiable, 58, 391.
- origin and development, 11.
- payment by, 20.

## [REFERENCES ARE TO PAGES.]

## NEGOTIABLE INSTRUMENTS—continued—

- payable on contingency, not, 54, 385.
- provision for sale of collateral, 57, 388.
- provision for confession of judgment, 57, 388.
- provisions as to collateral, 57, 388.
- rights of parties to, 134, 135.
- statement of transaction does not affect negotiable character, 381.
- waiver of benefits of law, 388.
- when may be attached, 135-136.

## NEGOTIABLE INSTRUMENTS LAW—

- adoption of, 15, 358.
- American Bar Association's work, 354.
- articles of, 368.
- codification of continental countries, 354.
- confusion before its adoption, 356.
- corresponding sections in the different states, 360, 361, 362, 363, 364, 365, 366, 367.
- history of, in U. S., 354.
- judicial notice of enactment in another state, 582.
- not adopted in Georgia, 714.
- object of, 355.
- origin and history of English Act of, 354.
- plea for its uniform construction, 692 et seq.
- purposes, 355.
- short title, 692.
- table showing the corresponding sections of the statutes in the different jurisdictions, 360, 361, 362, 363, 364, 365, 366, 367.
- takes effect when, 358, 702.
- title, 353.
- what it codifies, 353.
- what it is, 353.
- when in effect in various states, 358, 359.
- where adopted, 358, 359.
- where failed to pass, 356.
- where first adopted, 456.
- where found in state laws, 360 et seq.
- where in force, 356, 358, 359.
- whether changes the law, 353.
- why not a federal statute, 354.

## NEGOTIABLE INSTRUMENTS WITH COLLATERAL SECURITY—

- acceptance of collateral security not payment, 285.
- accommodation paper as collateral security, 289.
- agreement to rely on collateral security, when payment, 285.
- amount of debt controls recovery on collateral, 287.
- collateral instrument should not be overdue, 281.
- collateral note negotiable, 283.
- collateral security must be exhibited, 286.
- defenses between parties privity to collateral security, 290.
- delay on original note to await maturity of collateral, 284.
- demand for payment, when sufficient, 286.
- discharge of indorser by release of collateral, 286.

## [REFERENCES ARE TO PAGES.]

## NEGOTIABLE INSTRUMENTS With Collateral Security—continued—

- effect of agreement for delay, 284.
- form of guaranty of collateral note, 291.
- form of note with collateral security, 280.
- form of note with transfer account, 291.
- guarantee may not surrender collateral securities without releasing guarantor, 289.
- holder may proceed against indorser before collateral, 286.
- holder of collateral a holder for value, 281.
- indorser's remedy, 290.
- indorsee's rights under stipulations in collateral note, 287.
- meaning of collateral security, 278.
- memorandum on collateral note, 284.
- negotiability affected by option to take possession of property, 283.
- negotiability of collateral note, 283.
- negotiability of demand note not affected by collateral, 282.
- negotiability of note with collateral, 282.
- negotiability of note providing for sale of collateral, 282, 285.
- negotiability not affected by stipulation as to bank's authority, 282.
- notice unnecessary when collateral security taken by prior party, 288.
- ownership of collateral negotiable instrument, 282.
- pre-existing debt not value, 281.
- presumption as to ownership, 282.
- provision authorizing sale of collateral, 285.
- provision for requiring additional security, 285.
- satisfaction of debt through payment or sale of security, 290.
- separate obligations, 279.
- substitution of collateral securities, 290.
- surety discharged by release or loss of collateral, 289.
- surety not released by delay in enforcing collateral, 289.
- surrender of collateral as discharge, 287.
- surrender of collateral as discharge of guarantor, 287.
- surrender of collateral security when releases indorser, 286.
- tender of collateral when payment demanded, 286.
- transfer of collateral instrument for pre-existing debt, 281.
- when accommodation makers and indorsers not liable, 289.
- when collateral security excuses presentment, protest and notice, 288.
- when holder of negotiable instrument as collateral is holder for value, 281.
- when holder receives collateral instrument free from equities, 281.
- when holder's possession of collateral not a defense in maker's favor, 286.
- when provision for additional securities renders non-negotiable, 285.
- when transferer must show damage by failure to present collateral security for payment, 288.
- when transfer is as collateral for debt not due, 281.

## NEGOTIABLE IN ORIGIN—

- how long negotiable, 17.

## NEGOTIATE—

- power to, absence of words implying, 119, 463.

## NEGOTIATED—

- whether statement of law or fact, 457.

## [REFERENCES ARE TO PAGES.]

## NEGOTIATION, see also INDORSEMENT; DELIVERY; TRANSFER—

- after payment by party secondarily liable, 626.
- an unreasonable time after issue, 155, 498.
- bill must be negotiated within reasonable time, payable on demand, 566.
- back to prior party, 127.
- by assignment, in general, 109.
- by delivery, 108, 128, 455.
- by delivery, liability of, 128.
- by delivery, warranties of, 552.
- by holder with notice, 153-157.
- by holder without notice, 153-157.
- by indorsement, 109, 455.
- by operation of law, 109, 130.
- by prior party, 127, 479.
- by whom may be, 109.
- discharge of bill by failure to present for acceptance or negotiate, 658.
- how made, 455, 462.
- in breach of faith, 150, 174, 175, 501.
- meaning of term, 17, 108.
- methods of, by assignment, 109.
  - by delivery, 108, 552.
  - by indorsement, 108, 552.
  - by operation of law, 109, 130.
- of parts of bill in set, 673, 674.
- of demand note, an unreasonable time after issue, 66, 155, 498.
- prohibition of further, 119, 463.
- restrain for fraud, 81.
- title when by fraud, 142.
- to and by prior party, 479.
- what constitutes, 108, 455-457.
- when prior party may negotiate, 479.
- when provision for reimbursing payee, 370.
- when instrument negotiated, 17.
- when overdue, 155.
- when drawer and indorsers released by delay in negotiating bill, 658.

## NON-ACCEPTANCE—

- dishonored by, 186, 661.
- duty of holder on, 660.
- effect of, 186.
- omission to give notice of, does not affect rights of subsequent holder in due course, 203, 613.
- what amounts to, 186, 661.

## NON-COMPOS MENTIS, see also LUNATICS, ETC.—

- capacity, 30, 31.

## NON-EXISTING BILL—

- acceptance of, 93, 96.
- oral acceptance of, 93, 95, 96.

## NON-EXISTING PERSON—

- as payee, 395.

[REFERENCES ARE TO PAGES.]

**NON-NEGOTIABLE INSTRUMENT—**

assignment of, how accomplished, 131 et seq.  
authority of agent to execute, 416.  
distinguished from negotiable, 19.  
illustration of, 25.  
in general, imports consideration, 78, 79, 427.  
indorsement of, 556.  
indorsed in blank, not negotiable, 396.  
payable to cashier if payable to bank, 471.  
presumption of consideration, 428.  
rights of parties to, 134.  
transferred by assignment, 131.  
valid between parties, 23.  
when subject to terms of mortgage, 372.  
whether affected by act, 471.

**NON-PAYMENT OF BILLS OF EXCHANGE—**

damages for, 675.  
dishonor by, notice of when unnecessary, 203.  
"not transferable," renders note non-negotiable, 372.  
notice of, where acceptance refused, 203, 613.  
result of dishonor by, 207, 579.  
statement of, not sufficient, 194.  
when dishonored by, 194, 578.  
when instrument is dishonored by, 194, 578.

**NOTARY—**

acceptance for honor made before, 102.  
as to proof of signature and seal, 204.  
attests payment for honor, 219, 220.  
certificate is evidence, 208.  
demand in person, 205.  
may act as agent to give, 196.  
may make protest, 664.  
minutes of, equivalent to protest, 212.  
must make demand, 211.  
must make presentment, 212.  
notice of dishonor may be made by, 207.  
protest by, 210.  
protest, how made, 204, 205.  
recognition given official, 210.  
signature may be printed, 204.

**NOTARY PUBLIC, see NOTARY; PROTEST.**

**NOTARIAL ACT OF HONOR—**

necessary to payment for honor, 220.

**NOTE, see also PROMISSORY NOTE AND NOTES—**

defined, 695 et seq.  
drawn to maker's order, not complete until endorsed, 43, 676.  
negotiable, promissory, defined, 43, 676.  
not affected by omission of date, 46 et seq.

**NOTE OR BILL—**

doubt as to whether instrument is, 338, 413.

## [REFERENCES ARE TO PAGES.]

## NOTES—

- new, not payment, 218.
- promissory, given for patent rights, 705.
- promissory, given for speculative consideration, 705.

## NOTICE, see also NOTICE OF NON-ACCEPTANCE, ETC.—

- actual, 154.
- agent giving, 195, 196.
- as to known solvency of prior parties, 154.
- before full amount paid, 500.
- by bank, 196.
- constructive, 154.
- defects in, 195.
- from apparent alteration, 633.
- from maker's possession of indorsed note, 509.
- from writing on instrument, 488.
- holder without, 153, 484.
- judicial, of seal, 351.
- memorandum is constructive, 64.
- must be in writing, 593.
- negotiation restrained when, 175.
- of defect to holder before full amount paid, 153, 500.
- of executory contract or of sale with warranty does not put purchaser on inquiry as to breach, 487.
- of infirmity in instrument or defect in title, what constitutes, 508.
- of limited authority of agent, 421.
- of non-payment, law governing contents of, 232.
- preliminary, when takes place of formal presentment, 1, 14.
- proof of, 350.
- to agent, 197, 595.
- to agent as affecting principal, corporation, etc., 489.
- to indorser for collection, 197.
- to indorser of overdue paper, 197.
- unnecessary to person secured against loss, 203.
- what amounts to, 154, 508.
- what constitutes, 154, 508.
- when only part paid for, 153.
- whether sufficient by telephone, 594, 596.
- with private secretary, 198.
- with wife, 198.
- written supplemented and validated by verbal, 195, 593.

## NOTICE OF DEFECT—

- what constitutes, 508-512.

## NOTICE OF DISHONOR—see also DISHONOR—

- as between joint indorsers, 197.
- bank as agent may give, 196.
- by non-acceptance excuses notice of non-payment, 203, 613.
- by what mail to be sent, 199, 600.
- by whom given, 195, 589.
- contents of, 194.
- defined, 184, 194.
- delay in giving when excused, 202, 609.

## [REFERENCES ARE TO PAGES.]

## NOTICE OF DISHONOR—continued—

- duty as to collecting bank, 209.
- effect as to prior parties, 203, 591.
- effect as to subsequent parties, 203, 591.
- effect of deposit in branch post-office or letter box, 200, 602.
- effect of miscarriage in mails, 200.
- effect of notary's certificate, 208.
- effect of omission to give notice of dishonor by non-acceptance, 203, 613.
- effect of, when given by or on behalf of party entitled to give notice, 203, 591.
- enures to whose benefit, 591.
- failure to give, effect on original debt, 546.
- form of, 194, 594.
- given by agent, 195, 590, 592.
- in case of death, 198, 596.
- may be given by mail, 200, 594, 599.
- may be waived, 201, 605.
- may be given to party or agent, 197, 595.
- may be written or oral; terms of, 194, 594.
- may be delivered personally or by mail, 194, 594.
- may be given as soon as instrument dishonored, 198.
- miscarriage in mails does not impair validity of notice, 200, 601, 602.
- must be given, 196, 198, 586, 596.
- must be given to indorser, 197, 589.
- must be given to drawer, 197, 589.
- need not be signed; written may be supplemented by oral, 195, 593.
- need not be given surety, if maker, 587.
- notary acts as agent of holder, 196.
- notice by stranger not sufficient, 196.
- notice by agent, 196, 592.
- notice need not be signed, 593.
- of non-payment after notice of non-acceptance, 613.
- omission of notice of non-acceptance and effect, 613.
- pleading, 587.
- presumption as to delivery, 602.
- proof of deposit in postoffice, 602.
- received by purchaser of instrument, 484.
- sufficiency of description, 194.
- time in which indorser to give notice to prior parties, 598, 603.
- to anomalous or irregular indorser, 544.
- to antecedent parties, time to give, 603.
- to assignors for creditors, 198, 598.
- to bankrupt, 198, 598.
- to joint parties, not partners, 197, 597.
- to partners, 198, 597.
- to whom may be given, 595.
- to whom must be given, 196, 586, 596, 661.
- to whose benefit notice enures, 203.
- waiver, 201, 605.
- waiver embodied in instrument, 607.
- waiver of after dishonor, 201, 605.

## [REFERENCES ARE TO PAGES.]

## NOTICE OF DISHONOR—continued—

- waiver of before dishonor, 201, 605.
- waiver of and of presentment, 570.
- waiver of protest, what it includes, 211, 608.
- waiver written over signature, 607.
- what will constitute reasonable diligence, 202.
- when cannot be given after reasonable diligence, 201, 576, 609.
- when delay excused, 202, 609.
- when dispensed with, 608, 610, 611.
- when given, 198, 598.
- when misdescription does not vitiate, 195, 593.
- when need not be given to drawer, 200, 610.
- when need not be given to indorser, 200, 611.
- when notice sufficient, 194, 593, 601.
- when notice dispensed with, 200, 609.
- when notice deemed deposited in postoffice, 200, 601, 602.
- when party adds address to signature, 199, 604.
- where he is sojourning in another place, 199, 604.
- where he lives in one place and has office in another, 199, 604.
- where notice to be sent, 199, 604.
- where not sent by mail, 600.
- where must be sent; receipt of within time although mis-sent, 199, 604.
- where party dead, 196, 198, 596.
- where parties reside in same place, 199, 598.
- where parties reside in different places, 199, 599.
- where party has not given address, 199, 604.
- where principal obligor is dead, 198.
- where party bankrupt or an insolvent or assigns for creditors, 198, 598.
- who deemed agent to receive, 198.

## NOTICE OF EQUITIES—

- as bar to recovery, 484.
- before full payment of agreed amount, 500.
- by special indorsement is not, 469.
- qualified indorsement is not, 467.
- what constitutes, 527.

## NOTICE OF NON-ACCEPTANCE, see also NOTICE. ETC.—

- omission to give, does not prejudice rights of subsequent holder in due course, 203, 613.

## NOTICE OF NON-PAYMENT—

- place of sending, 199, 604.
- time allowed to one receiving, 199, 603.
- time when given, 198, 199, 203.
- timely receipt of irregularly sent, 199, 604.
- to bankrupt or solvent, 198, 598.
- to be given person liable on investment when acquired by assignment, 132.
- to joint parties not partners, 198, 597.
- to partners, 198, 597.
- to whom given, 196, 197, 586, 595.
- unnecessary after notice of non-acceptance, 203.
- waived by waiver of protest, 211, 666.



## [REFERENCES ARE TO PAGES.]

## NOTICE OF NON-PAYMENT—continued—

- waiver of, 201, 605.
- waiver of, on whom binding, 211, 607, 608.
- when dispensed with, 202, 609.
- when failure to give excused, 201.
- when may be given by agent, 197, 595.
- when must be given, 198, 199, 578, 603.
- when need not be given to drawer, 201, 611.
- when need not be given to indorser, 201, 611.
- when sufficient in form, 196.
- when unnecessary, 200, 203.
- where acceptance refused, 203, 613.
- where addressed, 200, 601.
- where parties reside in different places, 199, 604.
- where parties reside in same place, 199, 604.

## NOTICE OF PROTEST see also NOTICE, ETC.—

- effect of, 208.
- manner of sending, 4, 5, 208.
- to whom sent, 208.
- when drawer countermanded payment, 205.

## NOTING FOR PROTEST, 664, 665.

## NOVATION—

- effect of, 222.

## O

## OBLIGATION—

- of contract determined by *lex loci contractus*, 128, 129.

## OBLIGEEES—

- joint presentment to, when not partners, 193, 574.

## OCCUPATION OF COUNTRY BY ENEMY—

- as an excuse for non-presentment, etc., 202.

## OFFICE—

- holder of, as payee, 42, 394.

## OFFICER—

- fiscal or cashier, instrument drawn or indorsed to, 112, 471.

## OFFICERS OF CORPORATIONS—

- implied power to issue negotiable paper, 41.

## OLD PERSONS—

- instruments executed by those incapacitated, 163.

## OMISSIONS—

- construction in case of, 413.
- not affecting validity or negotiability, 45-56, 391.
- of date does not affect negotiability, 46, 391.
- of date, presumption as to, 47, 338, 401, 413.
- of date, same may be inserted, 47, 338, 401 413.
- of date, when interest runs, 47, 402.
- of place, where drawn or payable does not affect negotiability, 56, 58, 391.

## [REFERENCES ARE TO PAGES.]

## OMISSIONS—continued—

- of time of payment, 392.
- of value recital does not affect negotiability, 56, 58, 391.
- rules of construction as to, 338, 339, 413.
- to give notice of non-acceptance does not prejudice rights of subsequent holder in due course, 203, 613.

## ON OR BEFORE CERTAIN DATE—

- time of payment specified as, 55, 385.

## "ON PRESENTATION"—

- means payable on demand, 52, 392.

## OPENING STATEMENT, 348.

## OPERATION OF LAW—

- transfer by, 109.

## OPTION—

- of holder to require something in lieu of payment in money, 388.
- to pay in money or goods, 56.
- to pay "on or before" maturity, 385.
- to treat instrument as bill or note, 413, 644.

## ORAL ACCEPTANCE—

- good at common law, 86.
- in general, 86.

## ORAL AGREEMENTS—

- as to mode of payment, 336.

## ORAL ASSIGNMENTS, 133.

## ORDER—

- a bill must contain an, 49, 640.
- conditional, examples of, 49.
- illustrations and instances, 49, 50.
- instrument must be payable to or bearer, 369.
- instruments payable to, 50, 369, 394.
- instrument payable to order of drawer, 51, 394.
- instrument payable to order of maker, 51, 394.
- instrument payable to order of drawee, 51, 394.
- instrument payable to order of two or more payees, 51, 394.
- instrument payable to order of one of several payees, 51, 394.
- instrument payable to order of holder of office, 51, 391.
- in which indorsers are liable, 143, 559.
- of civility, as "please pay", etc., 50.
- out of a particular fund, conditional, 55, 381.
- payee must be named or indicated, 51.
- request, not sufficient, 49.
- statement of transaction, 57, 381.
- to do an act in addition to pay, 57.
- unconditional, is essential, 49.
- when is instrument payable to, 50.
- when unconditional, 57, 381.
- word order unnecessary, 49.
- words "by paying", 50.
- words sufficient to express, 49, 50.

## [REFERENCES ARE TO PAGES.]

## ORDER OR BEARER—

- instrument payable to, 50, 51.
- words essential to constitute, 51, 395.

## ORDER TO PAY—see also ORDER—

- bill of exchange must contain, 49.

## ORIGINAL DEFENSES—

- when instrument subject to, 149, 523.

## ORIGINAL PARTIES—

- parol evidence between, 45.

## OTHER PARTIES—

- than immediate parties, 25.

## OTHER KINDS—

- of commercial paper, 258.

## OVERDUE—see also OVERDUE PAPER, ETC.—

- indorsed when, 52, 392.
- indorsement presumed to be before, 125.
- in general, 504.
- rule where installment of principal or interest overdue, 156.
- when instrument payable on sight or demand deemed overdue, 52, 392.
- when payable on demand, 52, 392.

## OVERDUE BILL OF EXCHANGE—

- acceptance of, 91, 156, 653, 654.

## OVERDUE INSTRUMENT—

- acceptance of, 392, 653, 654.
- accommodation as defense, 449, 524.
- alteration, 632.
- equities let in, 489.
- holder of, not in due course but subject to defense, 404.
- indorsement of, 392.
- issued, accepted or indorsed, when, becomes payable on demand, 52, 392.
- not overdue on day of maturity, 486.
- payment of part of purchase price before and part after maturity, 500.
- payment to assignor with or without notice of assignment, 617.
- rights of prior owners against bona fide purchaser after maturity, 489.
- when demand instrument is, 498.
- when payable on demand, 392.
- whether made so by default of interest, 488.

## OVERDUE PAPER—

- installment, overdue effect of, 156.
- interest past due does not render whole due, 156.
- may be transferred, 156.
- rights of transferee, 157.
- set-off good against transferor, not good against transferee, 157.
- transferee of, takes subject to what equities, 157.

## OWNERSHIP—

- of instrument by principal debtor, effect of, 215, 223, 224, 615.
- presumption as to, when possession, 266.

## [REFERENCES ARE TO PAGES.]

## P

## "PAID"—

effect of stamping an instrument with, 583, 617, 647.

## PAID CHECK, 244.

## PAPER MONEY—

defined, 265.

how treasury note differs from others, 265.

most common form, 265.

## PAROL EVIDENCE—

admissibility of, to show intention in cases of irregular indorsement, 125.

admissible to show suretyship or accommodation, 450.

admissible to explain memoranda on instrument, 400.

as to acceptance, 339.

as to accommodation party, 450.

as to ambiguity, 45, 338.

as to amount, 334.

as to capacity, 419.

as to concealed sureties, 272.

as to conditions, 341, 410.

as to consideration, 336.

as to date, 333.

as to demand, 343.

as to execution and delivery, 339.

as to fraud and duress, 45, 341.

as to intention, 414.

as to interest, 336.

as to mistakes, 45, 341.

as to mode of payment, 335.

as to note itself, 344.

as to partial failure of consideration, 446.

as to parties, 331.

as to place of payment, 335.

as to protest and notice, 344.

as to reasonable attorney fee, 334.

as to transfer, 340.

as to usury, 343.

generally inadmissible to vary or contradict written instrument 334.

in general, 556, 560.

not admissible to show principal is payee of instrument payable to agent, 471.

to establish agreement as to extension of time, 332.

to show order of indorser's liability, 559.

to show accident, 45.

to show failure of consideration, 45.

to show fraud between the original parties, 45.

to show intention as to date, 46, 47, 334.

to show intention as to time, 332.

to show mistake, 45.

to show mistake in date, 45.

## [REFERENCES ARE TO PAGES.]

## PAROL EVIDENCE—continued—

- to show signer an agent, 419.
- to vary liability of agent who negotiates by delivery, 562.
- to vary effect of blank indorsement, 462, 545.
- to vary status of person signing instrument, 419.
- to vary liability of indorser, 549.
- when admissible, 332-345.
- when admissible to supply omissions in certificate of protest, 344.
- when not admitted as to time, 332, 333.
- when true time by fraud not stated, 332, 333.

## PART PAYMENT—

- in good faith, 181.
- ordinarily only payment pro tanto, 219.
- when operates as satisfaction, 219.

## PARTIAL—

- failure of consideration, 444-446.
- failure of consideration, parol evidence as to, 45.
- indorsement not permitted, 114, 417.

## PARTICULAR FUND—

- in general, 55, 381.
- instrument not negotiable when payable out of, 55.
- order on or promise to pay out of, not negotiable, 381.
- payment out of, 55, 381.

## PARTIES—see also ACCEPTOR; AGENT; CAPACITY, ETC.—

- change in personality, number or relation of, constitutes material alteration, 176.
- competency of, as witnesses, 330.
- defenses admissible between immediate parties, 159, 173, 175.
- immediate, who are, 173.
- immediate and remote, who are, 173.
- immediate, necessity for consideration between, 77.
- liabilities of, in general, 139.
- mental capacity lacking, 30.
- those not incapacitated, 33.
- warranty of capacity of, 140, 540.

## PARTIES, PLAINTIFF OR DEFENDANT—see ACTION ON NEGOTIABLE INSTRUMENTS.

## PARTIES TO BILL OF EXCHANGE—

- drawee, 11, 60.
- drawer, 11, 60.
- payee, 11, 60.

## PARTIES TO CHECK—

- drawee, 11.
- drawer, 11.
- payee, 11.

PARTIES AND THEIR CAPACITY—see also, CAPACITY; PARTIES, ETC.  
in general, 27.PARTIES PARTIALLY OR WHOLLY INCAPACITATED—  
in general, 28.

## [REFERENCES ARE TO PAGES.]

PARTIES TO NEGOTIABLE INSTRUMENT—see also, PARTIES, ETC.

PARTIES TO ACTION—see ACTION ON NEGOTIABLE INSTRUMENT.

## PARTNERS—

- acceptance by, 98.
- accommodation paper executed by one partner not binding on firm, 39.
- check of, effect of withdrawal of funds by partner, 683.
- dissolution of partnership, 39.
- dormant, 38-40.
- doing business in violation of law, instrument payable to, 539.
- firm not liable on paper issued in firm name for private debt of one partner, 38-40.
- general authority of one partner to bind firm, 38.
- implied power to make negotiable paper, 38-40.
- indorsing firm note, 545.
- liability of retired partner, 39.
- liability on accommodation paper, 38-40.
- liability when credit given to one member, 38-40.
- notice of dishonor to, 198, 597.
- one member of non-trading partnership cannot execute negotiable instrument without consent of all, 38-40.
- one or more may bind firm when, 39.
- payment to joint obligors when not, 193, 574.
- presentment for payment by and to, 193.
- presentment to, 193, 573.
- presentment to, for acceptance of bill of exchange, 193, 573.
- secret, 39.
- silent, 39.
- signature by agent, 419.
- trading partnerships, negotiable instruments negotiated by one partner bind firm, 38.
- transfer by one partner of paper held by firm, 510, 511.
- when notice of dissolution necessary, 39.

PARTNERSHIP—see also PARTNERS—

- check drawn by, 249.

PARTS OF FOREIGN BILL—see BILLS IN A SET.

PARTY TO FRAUD OR ILLEGALITY—

- meaning of, 524.

PASS-BOOK, 646.

PATENT RIGHT—see RIGHTS; PATENT.

- instrument given for, 58, 705.
- negotiable instruments given for, 58, 705.
- note for purchase price of patented article, 58, 705.
- note for use of patented article, 58, 705.
- note given for, when void, 80.
- notes, 58.
- words "given for a patent right", 58, 705.

PATENT—

- worthless, 80.

PAY TO ANY BANK OR BANKER, 464.

[REFERENCES ARE TO PAGES.]

**PAYABLE AT BANK—**

- equivalent to an order, 583.
- presentment, 192, 572.
- when instrument is made, 66.

**PAYABLE IN MONEY—**

- confession of judgment clause effect, 58.
- effect of adding something else, 56, 57.
- effect of an alternative, 56.
- effect of making payable in paper or currency of a particular bank, 59, 391.
- effect on making payable in work, 56.
- money and wheat, 390.
- necessity of, 56.
- option to receive money or stock, 389.
- of a foreign country, 59.
- what is, 59.

**PAYABLE ON DEMAND—**

- when, 392.

**PAYABLE TO BEARER—**

- negotiated by delivery, 51.
- no indorsement necessary, 110.
- special indorsement on instrument made, 128, 462.
- when, 51, 395.

**PAYABLE TO ORDER—**

- negotiated by indorsement, 17, 455.
- payee named, 50, 394.
- to whom, 51, 394.
- when, 50, 394.

**PAYABLE TO ORDER OR BEARER—**

- effect of words "to order of A", 50.
- effect of words "to the bearer", 50.
- effect of words "this is and shall be negotiable", 50.
- pleading must allege, 370.

**PAYEE—see also PARTIES, ETC.—**

- acceptance admits existence, 541.
- alternative payees, 394.
- alteration of name before indorsement, purchaser not holder in due course, 632.
- as holder in due course, 511.
- blanks for name of, 393.
- capacity of, to indorse admitted by acceptance, 140, 540.
- infants as, 28.
- joint payees, 394, 470, 559.
- must be designated, 60, 394.
- must be named or indicated with reasonable certainty, 51, 394.
- maker, drawer or acceptor admits existence and capacity of payee to indorse, 538, 541.
- non-existing person, 61, 395.
- one of several, 394.
- on payment should surrender instrument to payer, 218.
- rights against anomalous indorser, 548.

## [REFERENCES ARE TO PAGES.]

**PAYEE—continued—**

- rules concerning nomination of, 60, 61.
- when fictitious, 61, 395.
- who must be, 60, 394.
- whether holder in due course, 511.

**PAYER—**

- not primarily liable, rights of, 217.
- presentment of paper should be made to, 207.
- supra protest rights of, 220.

**PAYER FOR HONOR—**

- rights of, 220, 672.
- succeeds to rights of party for whom he pays, 220, 672.

**PAYMENT—see also DISCHARGE—**

- acceptance of instrument stated to be in full payment, 686.
- after notice of defective title, 688.
- alteration after, 632.
- applications of instrument to wrong account, 617.
- as satisfaction of forged instruments, 424.
- authority to receive, 216.
- bill protested for non-acceptance may be protested for non-payment, 665.
- by another bill or note, not a discharge, 218.
- by bank, altered check, 241.
- by check, note, etc., 20, 21.
- by fraudulent payee discharges instrument, 627.
- by guarantor not discharge, 627.
- by negotiable instrument, 20, 21.
- by one secondarily liable does not discharge, 182, 626.
- by party accommodated discharges instrument, 215, 615.
- by party secondarily liable does not discharge instrument, 182, 215, 626.
- by party secondarily liable, effect of, 182, 216, 626.
- by primary party, discharge, 182, 481, 615.
- by principal debtor, 182, 215, 615.
- by stranger presumptively a purchase, 623.
- by subsequent indorser no defense to prior indorser, 627.
- by surety maker not a discharge, 618, 627.
- by surety on appeal bond of prior parties, whether subrogation against subsequent party, 623.
- by whom made, 215.
- check may be accepted as, 235.
- conditional, what amounts to, 218, 219.
- conditional, negotiable instrument as, 623.
- debtor's note is conditional, 20.
- defined, 215.
- delivery of instrument on, 190, 571.
- discharge of instrument by, 215, 481.
- distinguished from sale, 215.
- effect of payment by indorser, 626-628.
- effect of stamping "paid" 216.
- extending time of, effect on party secondarily liable, 621.
- fact of, must be certain, 54.



## [REFERENCES ARE TO PAGES.]

## PAYMENT—continued—

- indorsement of is not a material alteration, 631.
- in due course defined, 182, 218, 584.
- in due course discharges instrument, 182, 215.
- instrument bought by maker when amounts to, 182.
- medium of, 235, 636.
- must be made in money, 218.
- new notes do not act as, 218.
- no time for expressed, means payable on demand, 392.
- not a contract, 215.
- note cannot be split into parts, 217.
- of check must be in money, 235.
- of bill drawn in set without surrender of bill, 141, 674.
- of forged check, 241n.
- of negotiable instruments, 214, 615.
- of one part of bill drawn in set, 71, 674.
- of antecedent debt as value, 432.
- of bill in set, 674.
- of check after countermand, effect, 434.
- of check by charging drawer's account, 652, 686.
- of check by certification, 686.
- of raised check by bank, 240.
- presumption that not, but purchase, 217.
- of stale check, 243.
- ordered in check subsequent to date, 236.
- option to require something in lieu of payment in money, 388.
- part payment, 219.
- partial, extinguishes debt pro tanto, 219.
- partial, when discharges debt, 219.
- payer should demand surrender of instrument and take receipt, 218.
- payer should see that holder's title is genuine, 218.
- presentment for, 188-194.
  - delay in when excused, 192.
  - effect of failure to make, 193.
  - necessary to charge drawer and indorsers, 184, 188, 563.
  - not necessary to charge principal debtor, 188.
  - place where made, 192.
  - time when made, 191.
  - to person not legal holder of instrument, 434.
  - to accommodation indorser, 189, 575.
  - unnecessary when acceptance refused, 187, 661.
  - when not required to charge drawer, 188, 574.
  - when dispensed with, 189, 575.
- tender of made by prior party, effect on party secondarily liable, 225, 621.
- through clearing house, 616.
- time of, need not be definitely ascertained, if sure to come, 54.
- to whom made, 215.
- to holder discharges instrument, 481.
- to transferor without indorsement before notice of transfer, 617.
- with money obtained by fraud, instrument not discharged, 617.
- what bills must be protested for non-payment, 662.
- what law governs, 231.

## [REFERENCES ARE TO PAGES.]

**PAYMENT—continued—**

- when bill or note of third person payment, 20, 21.
- when made in due course, 218, 584.
- when new note payment, 20.
- when payment may be made, 52, 392.
- when stranger's note payment, 20, 21.

**PAYMENT FOR HONOR, see also PAYMENT, SUPRA PROTEST—**

- applies only to bills of exchange, 219.
- attested by notary, 220, 672.
- by two or more parties, 220, 672.
- by whom, 219, 671.
- declaration of, 220, 672.
- declaration of intention, 220, 672.
- discharge of parties by, 219, 672.
- discharge of parties subsequent, 220, 672.
- effect of, 220, 672.
- effect of holder refusing to receive, 220, 672.
- effect of refusal to receive, 220, 672.
- effect on subsequent parties, 220, 672.
- for whom, 220, 671.
- how made, 220, 671.
- in good faith to holder with defective title, 218, 584.
- in installments does not affect negotiability, 54, 376.
- liability of prior parties, 220, 672.
- mode of making, 220, 671.
- notarial act of honor, 220, 671.
- payer subrogated to rights of party for whose honor payment made, 220, 672.
- preference among persons offering, 672.
- prior dishonor and protest, 220, 671.
- rights of payer for honor, 220, 672.
- where holder refuses to receive payment, 220, 672.
- when made, 219, 671.
- when may be made, 219, 671.
- when proper, 219, 671.

**PAYMENT IN DUE COURSE—**

- against prior party, 217.
- by accommodated party, 216.
- by maker or acceptor, 216, 217.
- discharge of instrument, 182, 214.
- effect of, 215.
- how to be made, 216, 217.
- made by person secondarily liable, rights on, 216.
- rights to negotiate, 216, 217.
- to whom made, 216, 217.
- what constitutes, 214.

**PAYMENT IN DUE COURSE—**

- what constitutes, 584.

**"PAYMENT SUPRA PROTEST"—see also PAYMENT FOR HONOR—**

- in general, 218.
- when may be made, 219.

[REFERENCES ARE TO PAGES.]

## PEDDLER'S NOTE—

consideration required to be stated in, 716.

## PENALTY FOR USURY—

laws tabulated by states, 708, 709.

## PENCIL—

signature in, 46.

## PER PROC—

signature, 37.

writing may be in, 46.

## PERSON—see also PERSONS—

defined, 376.

fictitious or non-existing, see FICTITIOUS PERSON.

in general, 345.

notice as to, when secured, 203.

## PERSONAL DEFENSES—see also DEFENSES—

admissible between whom, 173.

defined, 158.

evidence as to, 351.

## PERSON PRIMARILY LIABLE—

meaning of, 697.

## PERSON SECONDARILY LIABLE—

discharged when, 225.

meaning of, 697.

## PERSONAL REPRESENTATIVES, see EXECUTORS AND ADMINISTRATORS—

presentment to, 193, 573.

when given notice, 198, 596.

## PERSONS—

alien enemies, 33.

bankrupt or insolvent payer, 33.

drunkards, 31.

married women, 32.

spendthrifts, 32.

## PETITION, see COMPLAINT—

## PLACE—

alteration as to is material, 636.

alteration as to place, 636.

acceptance to pay at particular, 654.

for presentment for acceptance, 657, 659.

necessity of specifying, 391.

of acceptance, 185, 186.

of drawing or payment need not be specified, 56, 391.

of drawing instrument, necessity of specifying, 56, 391.

of indorsement, presumption as to, 125, 329, 474.

of payment—blanks for, 192.

of presentment—for payment, 192, 569, 570.

of protest, 204, 205, 663, 664.

of serving notice, 199, 604.

of signing estoppel by misrepresentation, 474.

## [REFERENCES ARE TO PAGES.]

## PLACE—continued—

- of payment of bill, may necessitate presentment for acceptance, 657, 659.
- omission to specify, immaterial, 56.
- presumption as to place of indorsement, 474.
- where drawn or payable, omission of, does not affect negotiability, 56.

## PLACE OF PRESENTMENT, see also PRESENTMENT—

- alteration in, 176.
- proper, what is, see Presentment for Payment, 570.
- to acceptor for honor, 103, 669.

## PLAINTIFFS, see ACTIONS ON NEGOTIABLE INSTRUMENTS—

## PLEA—

- of tender must be perfect, 351, 352.

## PLEADINGS, see also COMPLAINT; DECLARATION; FORMS OF; COMMON LAW, AND CODE PLEADING—

- acceptance in writing, 87, 646.
- after complaint or declaration, 304.
- bank credit as want of value, 441.
- breach of warranty on chattel, 503.
- classes of, 303.
- complaint, 304.
- complaint against indorser, 555.
- complaint against anomalous indorser, 549, 550.
- confession and avoidance, 304.
- conditional delivery, 409.
- consideration, 444.
- defenses to reduce recovery by lien holder, 443.
- defense of want of consideration, 444.
- delivery, 428.
- demurrer, 305.
- effect of failure to plead written acceptance, 87.
- extension of time, 622.
- equitable defenses, 474.
- failure of consideration, 444.
- holding in due course, 487.
- in abatement, 304.
- method of transfer, 456.
- meaning of term, 303.
- must allege negotiability, 370.
- note payable to maker's order, 677.
- notice of dishonor to indorser must be alleged, 587, 588.
- object of, 303.
- order of, 303.
- payable to order or bearer must be alleged, 370.
- plea in bar, 304.
- presentment for payment, notice of dishonor and waiver, 612.
- questions presented by, 303.
- to the jurisdiction, 303.
- traverse, 304.
- when check dishonored, 587.
- where payment countermanded, 587.

[REFERENCES ARE TO PAGES.]

**PLEDGE—**

of negotiable instruments, 153, 442.

**PLEDGE—**

a holder for value, 441.

**POLITICAL DISTURBANCES—**

as excuse for non-presentment, etc., 202.

**POSSESSION—**

of undorsed instruments, whether prima facie evidence of right to sue or ownership, 477.

presumption from, 266, 329.

whether preferential payment by maker discharges, 617.

**POST-DATED, 401.****POST-DATED INSTRUMENTS—**

instrument not invalid because post-dated, 401.

is negotiable, 401.

negotiation of, 401.

provisions as to, 47, 401.

**POST-OFFICE, see MAIL.**

money order, 266.

what constitutes deposit in, 602.

**POST-DATING INSTRUMENT, 47, 401.**

effect of, 393.

mutual agreement as to, 47.

not invalid because post-dated, 401.

not notice of equities, 401.

when title passes, 401.

**POWER OF ATTORNEY—**

to confess judgment, 57.

**POWER TO NEGOTIATE—**

absence of words implying, 119, 463.

**PRECLUDED, meaning of, 424.****PRE-EXISTING DEBT—**

as a consideration for negotiable instruments, 72, 432.

constitutes value, 432; see also Value.

is valuable consideration, 72, 432.

**PREFERENCE—**

whether preferential payment by maker discharges, 617.

**PRESENTATION—**

instrument payable on, is payable on demand, 392.

**PRESENTMENT, see also PRESENTMENT OF CHECK; PRESENTMENT FOR ACCEPTANCE; PRESENTMENT FOR HONOR; PRESENTMENT FOR PAYMENT SUPRA PROTEST. See FAILURE TO PRESENT.**

at dwelling, 100, 570.

at place of residence, 56, 570.

benefit derived from, 185.

by agent, 189.

by notary in person, 205.

by whom made, 189, 568.

damages for failure of, by bank, 237.

## [REFERENCES ARE TO PAGES.]

## PRESENTMENT—continued—

- defined, 183.
- delay in making excuses, 576.
- demand over phone, 190.
- during banking hours, 572.
- excuses for want of, see Excuses for Non-Presentment, Protest and Notice.
- exhibition of instrument on, 190, 571.
- how made, 212, 568.
- if holder is bankrupt, assignee must make, 198, 598.
- if holder is dead, representative must make, 198, 596.
- if no representative, should be made at dwelling of deceased or at place where payable, 198, 596.
- informal talk not sufficient, 190.
- instrument must be exhibited, 571, 572.
- laws of, tabulated by states, 708, 709.
- may be waived, 184.
- mode of, 189, 568.
- not personal, 187.
- not required where payment stopped, 187.
- presentment and notice explained, 3.
- personal demand not necessary, 187.
- place of, 189, 570, 571.
- proof of, 350.
- time for, 189, 566.
- time of, 190, 566, 580.
- time when made, 189, 566.
- to acceptor for honor, how made, 101, 667.
- to agent of drawee, 198.
- to joint debtors, 574.
- to persons liable as partners, 573.
- to whom made, 189, 569, 573.
- two times, 212.
- waiver of protest also waives, 211.
- waiver of exhibition of the instrument, 190.
- what law controls formalities of, 232.
- what law governs, 232.
- what sufficient, 568, 569.
- when at place of business and when at residence, 570.
- when dispensed with, 576, 577.
- when drawer bound without presentment, 574.
- when indorser holds security, 194.
- when necessary, 189.
- when payable at bank, 192, 572.
- where drawee dead, 193, 573.
- where drawees joint, 193, 574.
- where drawees partners, 193, 573.
- where made, 55, 56.
- where make, 187, 189, 570, 572.
- where making of check fraudulent, 189.
- where not payable on demand, 566, 567.
- where payable at bank, 572.
- where payable on demand, 566, 567.

## [REFERENCES ARE TO PAGES.]

**PRESENTMENT**—continued—

where principal debtor dead, 573.

where several promisors not partners should be made to each, 193, 574.

**PRESENTMENT FOR ACCEPTANCE**, see also **PRESENTMENT**—

applies only to bills of exchange, 86.

before bill is overdue, 658.

effect of failure to make, 658.

excused where drawee dead, 100, 660.

excused where drawee has absconded, 100, 660.

excused where drawee is fictitious person, 100, 660.

excused where drawee had not capacity to contract, 100, 660.

excused where cannot be made after reasonable diligence, 100, 660.

duty of holder upon nonacceptance, see **Holder**.

how presentment made, 98, 658.

must be by or on behalf of holder, 98, 184, 658.

must be at reasonable hour, 185, 658.

must be on business day, 185, 658.

must be to drawee or some person authorized to act for him on part holiday, 99, 186, 658, 659.

on Saturday, 99, 186, 658, 659.

on what days may be made, 186, 659.

place of, 100.

result of failure in, 98, 186, 658.

time when made, 185.

to dead drawee, how made, 98, 658.

to partners of bill of exchange, 98.

to whom made, 98.

what bills do and who do not require presentment for acceptance, 185.

when essential, 185.

when delay excused, 186, 659.

when excused, 100, 660.

when failure excused, 186, 650.

when made, 185, 657, 658.

when may be made, 97, 185, 657.

when must be made, 97, 185, 657.

when necessary, 185, 657.

when time is insufficient, 186, 659.

where drawee is bankrupt or insolvent, 98, 658.

where drawee is dead, 98, 658.

where drawer and indorsers released, 658.

where bill payable after sight, 185, 657.

where bill expressly stipulates for, 185, 657.

where bill not payable at drawee's place of business or residence, 185, 657.

where there are two or more drawees not partners, 658.

where required to fix maturity, 185, 657.

**PRESENTMENT FOR HONOR**, see also **PRESENTMENT**; **PRESENTMENT SUPRA PROTEST**—

on referee in case of need, delay in, when excused, 187, 644.

**PRESENTMENT FOR PAYMENT**, see also **PRESENTMENT**—

at bank, 192, 572.

burden of proof and pleading, 682.

## [REFERENCES ARE TO PAGES.]

## PRESENTMENT FOR PAYMENT—continued—

- certificate of deposit, 567.
- computation of time, 190, 582.
- date of, 190, 580.
- delay in when excused, 191, 576.
- demand over telephone, 190.
- dispensed with by dishonor, by non-acceptance, 661.
- drawer and indorsers discharged unless duly made and notice of, 188, 574.
- effect of delay, 192, 576.
- effect of failure to make, 193.
- effect of failure where instrument payable at a particular place, 187.
- effect on parties, 563, 564.
- excuse for does not excuse notice of dishonor, 572.
- holder has entire day in which to make, 190.
- how made, 189, 568.
- instrument dishonored for nonpayment when, 578.
- instrument falling due on Sunday, 191, 580.
- instrument falling due on holiday, 191, 580.
- instrument falling due on Saturday, 191, 580.
- instrument should be actually exhibited and delivered, 190, 571.
- instrument must be exhibited, 190, 571.
- legal holiday, not to be made on, 191, 580.
- may be waived, 189, 576.
- must be made on day of maturity, 191, 580.
- necessary in order to charge drawer or indorsers, 184, 188, 563.
- not necessary to bind acceptor or maker, 193.
- not necessary to charge principal debtor, 188, 574.
- not necessary to charge party primarily liable, 188, 563.
- not necessary when bill has been dishonored by non-acceptance.
- not presentment for acceptance, 653.
- not dispensed with by insolvency of maker, 567.
- of instrument payable at bank, 192, 572, 583.
- of instrument payable on demand, time for making, 191, 566.
- of instrument not payable on demand, 191, 566.
- place of presentment, 187, 189, 192, 570.
- proof of, 350.
- proper place for, 570.
- Sunday, cannot be made on, 191, 580.
- time for, how computed, 190, 582.
- to acceptor for honor, 669.
- to accommodation indorser, 189.
- to joint obligators not partners, 193, 574.
- to joint parties who are not partners, 193, 574.
- to persons liable as partners, 193, 573.
- to partnership, 193, 573.
- to whom made, 189.
- unnecessary when acceptance refused, 187, 661.
- want of, effect on original debt, 193.
- waiver of, 189, 576.
- waiver of notice of dishonor, 570.
- what constitutes sufficient presentment, 189, 568.



## [REFERENCES ARE TO PAGES.]

**PRESENTMENT FOR PAYMENT**—continued—

- what will amount to waiver, 189, 576.
- what sufficient, 189, 568.
- what essential, 188, 568.
- when delay excused, 191, 576.
- when dispensed with, 189, 576.
- when made to personal representative, 193, 573.
- when must be made, 191.
- when not required to charge drawer, 189, 574.
- when not required to charge indorser, 575.
- when payable on demand, 191.
- when person primarily liable is dead, 193, 573.
- when place of payment specified, 187, 192, 570.
- when presentment made in person, place unimportant, 187.
- where cannot be made, 576.
- where drawee is fictitious person, 189, 576.
- where indorser holds security, 194.
- where instrument payable on demand, 191.
- where instrument payable at bank, 192, 572.
- where maker or acceptor has abandoned place of business, 187, 192.
- where made, 187, 570.
- where no place of payment indicated, 192, 570.
- where persons primarily liable are partners, 193, 573.
- where person to make payment has removed, 570.
- where principal debtor dead, 193, 573.
- within what time check must be presented, 191, 566.

**PRESENTMENT OF CHECK**, see also **PRESENTMENT**; **PRESENTMENT FOR ACCEPTANCE**; **PRESENTMENT FOR PAYMENT**—

- must be in reasonable time, 191, 237.
- when must be made, 191, 236.

**PRESENTMENT SUPRA PROTEST**, see also **PRESENTMENT FOR HONOR**—

- when and how made, 101, 667, 668.

**PRESUMPTIONS**, see **EVIDENCE** also—

- as to cash at bank, 344.
- as to conditions, 77, 102, 341, 342.
- as to consideration, 329, 427, 429.
- as to continuation of agency, 38.
- as to date, 333, 400.
- as to date of acceptance, 329, 400.
- as to date of drawing, 400.
- as to date of indorsement, 329, 400, 473.
- as to date when none appears, 329, 473.
- as to debt, 330.
- as to delivery, 63, 408.
- as to execution and delivery, 339, 408, 427.
- as to filling date in blank, 333.
- as to holding in due course, 149, 527.
- as to indorsee's authority to fill in date, 333.
- as to indorsement without date, 334.
- as to law merchant, 350.
- as to liability when instrument signed by several, 330.

## [REFERENCES ARE TO PAGES.]

## PRESUMPTIONS—continued—

- as to ownership when in possession, 266.
- as to parties, 337, 338.
- as to payment of debt, 330.
- as to payment and discharge, 343.
- as to payment when possessed by owner, 330.
- as to place, 329, 333, 474.
- as to place of indorsement, 125, 329, 474.
- as to place of payment, 335.
- as to presentment, 344.
- as to settlement of accounts, 330.
- as to second indorser, 125.
- as to signature, 329, 427.
- as to time of indorsement, 125.
- as to title, 348.
- as to transfer, 340.
- as to undated indorsement, 349, 473.
- as to valuable consideration, 329.
- changed by evidence, 329, 330.
- delivery, 63, 408.
- from possession of unindorsed instrument, 477.
- from several inks and handwritings, 404.
- importance of, 330.
- in general, 329.
- of authority to fill blanks, 403.
- of capacity, 31, 32.
- of capacity of married woman, 31, 32.
- of sanity, 31.
- order of liability of indorsers, 559.
- some, 329.
- that all terms stated therein, 348.
- that bill is an inland bill, 44.
- that holder is owner, 329.
- that holder entitled to recover full amount, 329.
- that issued for valuable consideration, 329.
- that payee a *bona fide* holder, 329.
- that regularly issued, 329.
- what extension of time indorsed on instrument, 329.
- when instrument is introduced in evidence, 348.
- where laws in conflict, 349, 350.
- when notice of dishonor is mailed as to arrival, 601.

## PRICE OF GOODS AND CHATTELS—

- notes in payment of, 55.

## PRIMARILY LIABLE, meaning of term, 697.

## PRIMARY PARTY, see also PARTIES—

- chargeable without presentment for payment, 563.
- meaning of, 697.
- who liable as, 139.

## PRINCIPAL, see also AGENT; PRINCIPAL AND AGENT—

- change in amount of, constitutes material alteration, 176.
- may sign by agent, 416.
- not liable unless signature on instrument, 415.

## [REFERENCES ARE TO PAGES.]

- PRINCIPAL**—continued—  
    liable on instrument with cashier or fiscal officer as indorser, 471.  
    signature by procuration, 421.  
    signature on behalf of, liability of agent and principal, 417.
- PRINCIPAL AND AGENT**—  
    knowledge to agent is knowledge to principal, 154.
- PRINCIPAL DEBTOR**—  
    effect of ownership of instrument by, 214, 615.  
    effect of release on party secondarily liable, 225, 621.  
    when possession by, discharges instrument, 223, 224, 615.  
    who is, 207.
- PRINCIPAL AND SURETY**, see **SURETY**—
- PRINT**, included in "writing," 695.
- PRINTED AND WRITTEN**—  
    provisions, conflict between, 338, 413.  
    signature of notary, 663.
- PRIOR PARTY**—  
    negotiation by, 127, 479.
- PRIVATE CORPORATIONS**—  
    power to become parties, 40.
- PRIVY PARTIES**, see also **IMMEDIATE PARTY**—  
    when, 173, 174.
- PROCEDURE**, see **TRIAL PROCEDURE**—
- PROCURATION**—  
    authority, 37, 48, 421.  
    signature by, 48, 421.
- PRODUCE DRAFT**, 383.
- PROFERT**—  
    when must be, 352.
- PROHIBITION**—  
    of further negotiation, 463.
- PROMISE**—  
    to accept bill of exchange, 94, 650.  
    to do an act in addition to pay, 57, 388.  
    unconditional not affected by certain provisions, 57, 381.  
    words of promise required, 49.  
    word promise unnecessary, 49.  
    words "on demand," 51.
- PROMISE TO PAY**, see also **ORDER**—  
    bare acknowledgment of debt insufficient, 51.  
    conditional, examples of, 58, 381.  
    illustrations of forms of words indicating, 49.  
    must be an express promise, 49, 51.  
    must be contained in promissory note, 49, 51.  
    must be unconditional, 49, 381.  
    out of particular fund, conditional, 58, 381.  
    statement of consideration, 58.  
    statement of transaction, 58, 381.
- PROMISSORY NOTE**, see also **NEGOTIABLE INSTRUMENTS**—  
    amount, 2, 676.  
    amount in figures, 2.  
    ambiguous instrument may be considered bill or note, 413.  
    another form of, 2.

## [REFERENCES ARE TO PAGES.]

## PROMISSORY NOTE—continued—

- "Bohemian oats," 181.
- certainty of promise in, 676.
- date, 2, 676.
- defined, 43, 676.
- drawn to maker's own order, 394.
- effect of statute of Anne on, 15.
- form of, 1, 2.
- general characteristics, 2, 3, 4, 676.
- given for patent rights, 58.
- given for speculative consideration, 164.
- introduction into England, 15.
- may be payable to maker's order, 394.
- meaning of term, 676.
- negotiable defined, 43.
- negotiability of, 15.
- new notes, when payment, 219.
- note means, 695.
- non-negotiable notes, 43.
- order of, 3.
- origin and history, 15.
- origin under law merchant, 15.
- parties to, 2, 3.
- payee, 3.
- place, 2, 3.
- place of payment, 3.
- promise, 2.
- to maker's order, not complete without written indorsement, 676.
- time, 2.
- use among Romans, 15.
- when bill may be treated as, 413, 644.
- when holder may treat as bill or note, 413, 644.
- whether negotiable at common law, 15.

## PROOF—

- by protest, 207, 208.
- demand and dishonor must be shown, 587.
- drawer's refusal when protest, 204.
- of foreign law, 349, 350.
- of authority to act as agent of corporation, 38.
- of presentment for payment, etc., 350.
- seal and signature of notary, 204.
- through special indorsement, 117, 139.

## PROOF, BURDEN OF, see also BURDEN OF PROOF—

- of agency, 37, 38, 49, 416.
- of foreign law, 349, 350.
- of payment, how made, 350.
- of presentment, how made, 350.
- of signatures, 349, 350.
- personal defenses, 351.
- where defense shows fraud, 351.
- where defense shows lack of consideration, 351.
- where laws in conflict, 349, 350.

[REFERENCES ARE TO PAGES.]

PROTECTOGRAPH, see ALTERATION—

PROTEST—

- as between joint indorsers, 197.
- before maturity where acceptor insolvent, 665.
- both for non-acceptance and non-payment, 210, 613, 665.
- by whom made, 205, 664.
- cause for protesting the bill, 663.
- certificate of, as evidence, 208.
- certificate of, not conclusive, 614.
- certificate of, evidence of dishonor of foreign bills, 208.
- collateral facts in, 208.
- conflict of laws as to, 212.
- contents of, 663.
- defined, 207.
- delay in making when excused, 205.
- demand made and answer given, 664.
- effect of when not required, 210.
- evidence of what, 208.
- excuses for want of, see Excuse for Non-Presentment, Protest and Notice.
- extending protest, 664.
- for better security, when made, 666.
- for non-payment, when necessary, 211, 666.
- form of, 205.
- form for notice of, 209.
- how must be made, 204.
- inland bills may be, 210.
- manner of, 204.
- may be made in case of dishonor of any instrument, 210, 613.
- may be made for both non-acceptance and non-payment, 210, 613.
- may be made by notary public, 205, 664.
- may be made by resident, 205, 664.
- meaning of, 183, 204.
- minutes of notary equivalent to, 212.
- miscellaneous matters, 211.
- must be annexed to bill, 204, 663.
- must be made for non-acceptance and non-payment, 210, 662.
- must be made under hand of notary, 204, 663.
- must be made under seal of notary, 204, 663.
- must specify time and place of presentment, 204, 663.
- must specify fact that presentment was made, 204, 663.
- must specify cause or reason for, 663.
- necessary in case of foreign bills, 210, 613, 662.
- necessary only on foreign bill of exchange, 210, 613, 662.
- necessity for, 207.
- notary must have personal knowledge of presentment and demand of payment, 204.
- notice, effect of, 208.
- notice of, 208.
- notice of, to whom sent, 208.
- not required except in case of foreign bills, 210, 613.
- noting and extending time of, 665.
- of bill accepted for honor, 103, 670.

## [REFERENCES ARE TO PAGES.]

## PROTEST—continued—

- of bill dishonored by acceptor for honor, 103, 670.
- of destroyed bill, 666.
- of foreign note when indorsed, 210.
- of inland bill or note, 210. ---
- of lost bill, now protested, 212, 666.
- on copy, 204, 663.
- on written particulars, 210, 212.
- place of, 205, 665.
- presentment must be by notary himself, 204.
- proof by, 208.
- proof of at trial, 207.
- purpose of, 207.
- seal necessary, 204.
- time within which certificate of must be prepared, 205.
- unnecessary unless bill appears on its face to be a foreign bill, 210.
- use of, at trial, 208.
- validity of, determined by law of place where made, 212.
- waiver of, 211, 608.
- waiver of, effect on negotiability, 623.
- waiver of, upon whom binding, 211.
- waiver of, waives also presentment and notice of dishonor, 211, 608.
- what certificate of, must contain, 204.
- what instruments must or may be protested, 210, 662.
- what law governs, 210.
- what waiver of includes, 211.
- when bill is lost, destroyed or wrongly detained, 212, 666.
- when delay is excused, 211.
- when dispensed with, 211, 666.
- when drawer countermanded payment, 205.
- when made, 205.
- when must be made, 205, 664.
- when may be dispensed with, 211, 666.
- when necessary, 210, 662.
- when required, 210.
- where bill is lost, 212, 662.
- where made, 205, 665.
- where to be made, 205, 665.
- within what time to be made, 205, 664.

## PROVISIONS—

- additional not affecting negotiability, 57, 388.
- as to confession of judgment, 388.
- as to sale of collateral securities, 388.
- giving holder an election as to requirements, 388.
- waiving benefit of certain laws, 388.

## PUBLIC CORPORATIONS—

- power to execute negotiable paper, 41.
- power to issue, 41.
- presumption as to authority, 42.
- when personally liable, 42.

[REFERENCES ARE TO PAGES.]

**PUBLIC OFFICERS—**

- holder of an office for time being, 42.
- individual liability, 42.
- negotiable instruments by, 42.
- power to execute negotiable paper, 42.

**PUBLIC POLICY—**

- consideration against, illegal, 81.
- considerations which contravene, 181.
- examples of considerations opposed to, 81, 181.

**PURCHASE—**

- when presumption that purchase and not payment, 217.

**PURCHASE FOR VALUE WITHOUT NOTICE—see HOLDER IN DUE COURSE.****PURCHASE OF INSTRUMENT—see DISCHARGE; TRANSFER.****PURCHASER, BONA FIDE—see BONA FIDE HOLDER; HOLDER FOR VALUE, ETC.****PURCHASER FOR VALUE—see also BONA FIDE HOLDER; HOLDER FOR VALUE, ETC.****Q****QUALIFIED ACCEPTANCE—**

- effect of, 654.
- in general, 654.
- right of holder to refuse, 655.
- what constitutes, 654.

**QUALIFIED ENDORSEMENT, see also INDORSEMENT; CONDITIONAL AND RESTRICTIVE INDORSEMENT—**

- in general, 467.
- liability of, 467, 553.

**QUANTUM MERUIT, 28.****QUANTUM VALEBAT, 28.****QUASI-NEGOTIABLE INSTRUMENTS, see OTHER KINDS OF COMMERCIAL PAPER.****R****RAISED CHECK, see ALTERATION.****RATE OF INTEREST, see also INTEREST.****RATIFICATION—**

- by drunkard, 32.
- married women, 33.
- of alteration, 223.
- of contracts made while an infant, 28.
- of contracts made while insane or drunk, 32.
- of forged or unauthorized signature, 459.
- of forgery, 422.
- verbal or written, 29.

**REAL DEFENSES, see DEFENSES.****REACQUISITION—**

- from holder in due course, can not better title, 523.
- from holder in due course by prior party, subject to equities fol-

[REFERENCES ARE TO PAGES.]

REACQUISITION—continued—

lowed by negotiation to one not holder in due course, 524.  
holder suing in own name for benefit of owner, 482.  
striking out indorsements. 475, 626.  
title by, 479.

REASONABLE DILIGENCE, see DUE DILIGENCE.

REASONABLE HOUR—

circumstances to control, 185.  
for presentment, 569.  
in general, 99.  
what constitutes, 185.

REASONABLE TIME—

allowed bank to make credit, 250.  
for filling blanks, 403.  
for presentment of check, 682.  
how determined, 699.  
in general, 699, 700.  
in case of instrument payable on demand, 498.  
instrument payable on demand must be presented within, 498, 566.  
what is, 498, 499, 699.  
when question of law, 700.  
when question of fact, 700.  
when check must be presented, 682.  
when instrument payable on demand becomes overdue, 498.  
when instrument payable on demand must be presented, 566.  
where check in negotiated, 567.

RECEIPT—

on draft or check. 640, 680.  
payer should take, 218.

RECEIVER—

paper in hands of, 136.

RECOURSE, INDORSEMENT WITHOUT, see INDORSEMENT WITHOUT RECOURSE.

RECOURSE, INDORER WITHOUT, see INDORSER WITHOUT RECOURSE.

RE-EXCHANGE, 675.

REFEREE IN CASE OF NEED—

defined, 177, 178, 187, 188, 644.  
delay in presentment to, when excused, 669.  
excuse for delay in presentment to, 669.  
insertion of, 644.  
liability to holder, 644.  
meaning of term, 644.  
protest before presentment, 669.  
protest of bill having, 669.

REFERENCE IN CASE OF NEED—

protest of bill before presentment for payment, 669.

REFORMATION—

of negotiable instrument, 404.



## [REFERENCES ARE TO PAGES.]

## REFUSAL—

- to return bill, effect, 652, 666.
- to accept payment for honor, effect of, 672.

## REIMBURSEMENT—

- in general, 618.
- of maker by payee, 446.

## RE-ISSUE OF PAPER—

- when may be, 479.

## RE-ISSUE OF INSTRUMENT, 479, 626—

- by drawee after payment of check, 456.
- by drawer, 626.
- by endorser, whether fresh indorsement necessary, 524.
- of accommodation instrument, 451.

## RELEASE—

- effect of, 225.
- effect of assent or request of secondary party, 623.
- of accommodating primary party, effect on secondary parties, 621, 622.
- of one maker as discharge of others, 621, 622.
- of principal debtor, effect of, on party secondarily liable, 225.
- reservation of right of recourse against other parties, 621.
- to principal debtor, whether guarantor discharged, 623.

## REMEDY—

- governed by *lex fori*, 227.

## REMEDIES OF GUARANTORS, 273.

## REMOTE PARTIES—

- who are, 173.

## REMOVAL—

- effect upon notice, 192.
- effect upon presentment, 192.
- of maker or acceptor as excuse for non-presentment, etc., 192.

## RE-NEGOTIATION, see RE-ISSUE OF INSTRUMENT.

## RENEWAL—

- of instrument without consideration, 428.
- of instrument subject to known equities, 432.
- of instrument not taken up, 433.
- of usurious instrument, 449.
- promise for, as waiver, 605.

## RENEWAL OF BILL OR NOTE—

- agreement in writing, 65.
- collateral agreement, 65.
- consideration for, 65.
- proof of extension of time, 332.
- whether payment of former note, 218.

## RENEWAL NOTES, see RENEWAL OF BILL OR NOTE.

## RENEWAL INSTRUMENT—

- as value, 428.
- alteration of, effect on original, 616.

## [REFERENCES ARE TO PAGES.]

## RENEWAL INSTRUMENT—continued—

- extension of time by, as discharge, 622.
- governed by act though original instrument before act, 549.
- if invalid, not a discharge of original, 616.

## RENUNCIATION—

- by holder must be in writing, 628.
- discharge of instrument by, 225, 628.
- effect of, 225, 628.
- how made, 616, 629.
- holders in due course not affected, 628.
- must be in writing, 215, 628.
- of rights by holder, 225, 628.
- requirement of writing may be waived by holder, 629.
- whether relinquishment upon consideration included, 629.

## REPEAL OF STATUTES—

- making certain illegal transactions real defenses, 502, 503, 504.
- making words of negotiability unnecessary, 373.

## REPRESENTATIVE CAPACITY—

- indorsement in, 472.
- person indorsing in, may negative personal liability, 472.
- signature in, 417, 472.

## REQUISITES OF NEGOTIABILITY, 43, 676.

## RESERVATION, 621.

## RESIDENCE—

- notice of dishonor to, 604.
- presentment at, sufficient when maker or acceptor dead, and no personal representative appointed, 604.
- presentment for acceptance, at, 186.
- presentment for payment at, 190.
- presentment may be made to person found at, 190.

## RESTORE—

- altered instrument, by court of equity, 177.

## RESTRAIN—

- negotiation for fraud, 175.
- when notice, 175.

## RESTRICTIVE INDORSEMENT—

- defined, 119, 463.
- effect on negotiability, 17, 119.
- examples of, 91.
- holder takes subject to equities, 121.
- in general, 119, 463, 464.
- rights conferred by, 119, 463, 464.
- rights of indorsee under, 119, 464.

## RESULT OF DISHONOR, 208.

## RETENTION OF BILL—

- by drawee, 96.

## REVENUE STAMP, see also STAMPS—

- addition of, not material alteration, 637.
- failure to put on a, 130.

[REFERENCES ARE TO PAGES.]

## REVOCATION—

- of acceptance, 97.
- of agency, 38.
- when permitted, 62.

RIGHT OF ACTION, see also ACTION; SUIT, ETC.—  
in general, 119, 465.

RIGHT OF RECOURSE—  
reserving of, 225.

RIGHTS OF HOLDER, see HOLDER—

- in due course, 481, 518, 519.
- in due course, descend to subsequent holder, 523.
- of bills drawn in set, 70.
- of forged check, 241n.

RIGHTS OF PAYOR FOR HONOR, 672.

RIGHTS, PATENT—

- instrument given for, 58, 705.

RUBBER STAMP—

- indorsement by, 424, 459.
- in general, 458.

## S

SALOON LICENSE—

- instrument given for assignment, 503.

SALE—

- at discount not usury, 167.
- payment distinguished from, 216.

SANITY—

- presumption, 30.

SANS RECOURSE, see INDORSEMENT; INDORSEMENT WITHOUT RECOURSE; QUALIFIED INDORSEMENT.

SATISFACTION, see also ACCORD AND SATISFACTION; PAYMENT—  
accord and, 221.

SATURDAY—

- instrument falling due on, when payable, 580.
- presentment of bill of exchange, for acceptance on, 659.
- when day of maturity falls on, 580.

SAVINGS BANK—

- liability on forged check, 242.
- when order on payable out of particular fund, 55.

SEAL—

- corporate dispensed with, 41.
- does not affect negotiability, 69, 391.
- effect of, 69.
- effect of, on negotiability, 69, 391.
- imports a consideration, 22.
- instrument not affected by, 69, 391.
- judicial notice of, 351.
- of notary, unnecessary to prove, 204.
- of notary, when may be printed, 204.

[REFERENCES ARE TO PAGES.]

SECONDARY PARTY, see PARTIES; DISCHARGE OF SURETY—

- meaning of, 697.
- right of recourse against, 579, 661.
- whether guarantor is, 623.

SECRETARY—

- notice with, 198.
- of corporation, power to issue bills and notes, 40.
- or treasurer of corporation, power to issue negotiable paper, 40.

SECURITIES—

- negotiation of public or corporation, 552.
- public or corporate, 144, 552.

SECURITY, see also COLLATERAL SECURITY—

- indorse as collateral, 341.
- in general, 222.
- when protest made for better, 212, 665.

SELLER OF NEGOTIABLE INSTRUMENT—

- agent's liability as, 144, 561.
- payment distinguished from sale, 215, 216.

SERIES OF NOTES—

- all due upon default of one, 373.

SERVICES—

- as a consideration, 74.

SEPARATE PAPER—

- indorsement on, 132.

SET, see also BILLS IN A SET—

- acceptor of, 70.
- bills drawn in, 70.
- bills drawn in, acceptance of, 70.
- bills drawn in, constitute one bill, 70.
- form of parts, 69.

SET-OFF—

- between parties to action may be relied on, 519.
- defined, 18.
- in general, 18, 20.
- included in "action," 695.
- not an equity which passes with overdue paper, 157.
- on certified check, 685.
- to what actions applicable, 19, 20.

SEVERAL INSTRUMENTS—

- simultaneous execution of, 413.

SEVERAL NOTE, 61.

SEVERAL PARTS OF A FOREIGN BILL, see BILLS IN A SET; SET.

SHORT TITLE—

- of negotiable instruments, 692.

SICKNESS—

- as excuse for non-presentment, etc., 202.

SIGHT—

- bill payable after, acceptance after, 653, 654.
- bills payable at, do not require presentment for acceptance, 97, 98.

## [REFERENCES ARE TO PAGES.]

## SIGHT—continued—

- instrument payable after, negotiable, 385.
- instrument payable after, blanks in date of acceptance, 402.
- instrument payable at, payable on demand, 392.
- instruments payable at, whether grace allowed, 580.
- laws as to days of grace tabulated by states, 708, 709.
- presentment for acceptance, 97, 98.
- time of presentment for payment where bill payable at or after, 190, 580.
- whether instrument payable at, entitled to grace, 190, 580.

## SIGNATURE—

- acceptor admits genuineness of drawers, 541.
- affixed without authority, 49.
- binding on individual, 419.
- bank presumed to know signature of depositors, 241, 242.
- by agent, 48, 416.
- by another, 48.
- by assumed name, 49, 415.
- by mark, 47, 48, 370.
- by one not cognizant of nature of instrument, 501.
- by procuration, 48, 421.
- by rubber stamp, 48.
- by trade name, 49, 415.
- by two or more, construction of, 413.
- doubt as to whether that of maker, or indorser, 413.
- effect of "per proc," 37.
- engraved, 48.
- forgery of, 49, 422.
- how bind corporation, 36.
- how made, 47.
- how written, 47.
- in place of maker, 414.
- in Roman letters, 48.
- in script, 48.
- initials sufficient, 48.
- in what part, 47.
- lithographed, 48.
- made without authority, 49, 422.
- necessary to liability, 49, 415.
- of drawer admitted by acceptance, 140.
- of person secondarily liable, cancellation of, 225. 508.
- photographed, 48.
- place of, 47.
- proof of, 48.
- printed, 47, 48.
- rubber stamp, 47, 48.
- typewritten, 47.
- uncertain in effect, deemed indorsement, 413.
- what will suffice for, 47.
- whether witnesses necessary if by mark, 48.
- with qualifying or descriptive words, 417.
- with several inks. 404.

## [REFERENCES ARE TO PAGES.]

## SIGNER—

when deemed indorser, 544.

## SIGNING—

by agent, 37, 416.

in blank before delivery by one not otherwise party to instrument,  
548.

trade or assumed name, 49, 415.

## SILVER CERTIFICATES, 265.

## SIMULTANEOUS EXECUTION—

of several instruments, 413.

## SITUS—

as to taxation, 227.

## SOJOURNER—

in general, 199, 604.

## SPECIAL INDORSEMENT—

definition and effect, 116, 462.

how blank indorsement made, 117, 463.

in general, 116, 462.

on instrument payable to bearer, 469.

proof through, 117.

## SPECIE—

note payable in, 391.

## SPECIFIC FUNDS, 370.

## SPECULATIVE CONSIDERATION—

in general, 164.

instruments given for, 164.

words "given for a speculative consideration," 164.

## SPENDTHRIFT—

guardian for, 32, 163.

under guardian, not indorse, 32, 163.

## SPLITTING INTO PARTS—

court can not, 17.

## SPOLIATION—

of instrument, effect on, 177.

## "STALE CHECK"—

in general, 243.

status of, 243.

when, 243.

## STAMPS—

act of 1862, 67.

act of 1898, 67.

cancellation of by wrong party, 172.

excluding from evidence, 172.

failure to put on a, 67, 171.

Federal acts, 67.

history of, 67.

origin, 67.

repeal of act of 1898, 67.

## [REFERENCES ARE TO PAGES.]

- STAMPS—continued—  
whether failure to use, real defense, 171, 172.  
where omitted fraudulently, 171.
- STATEMENT—  
as to deposit of collateral, 57.
- STATEMENT OF TRANSACTION—  
does not render bill or note conditional, 57.  
effect of, 57.  
set out, 57.
- STATES—  
of Union, foreign to each other, 44, 643.  
where uniform negotiable instruments law has been adopted, 708, 709.
- STATUTE—  
act in violation, illegal as consideration, 81.  
begins to run when, 235.  
bill void by, effect of, 81.  
consideration void by, 168.  
instrument void by, 181.  
introduction of special in evidence, 227.  
wagers and gaming contracts, 164-169.
- STATUTE OF ANNE—  
established negotiability of promissory notes, 18.  
in general, 15.  
passed in, 18.  
principles of, followed, 18.
- STATUTE OF FRAUDS—  
guaranty on note need not allege consideration, 428.  
not applicable to oral guaranty secured by note, 416.  
not applicable to agreement for conditional delivery, 408.  
whether guaranty within, 270.  
written or parol evidence admissible as between accommodation indorsers, 560.
- STATUTE OF LIMITATIONS—  
as a defense, 171.  
in general, 2.  
on demand instrument, 373.  
on negotiable instruments, 663.  
period on judgments in courts of record tabulated by states, 708, 709.  
period on notes tabulated by states, 708, 709.  
when begins to run against check, 235.
- STEPS IN JURY TRIAL, 347.
- STIPULATION—  
limiting liability of drawer, 540.
- STOCK—  
option of holder to receive, 389.
- STOCK EXCHANGE NOTES, 164.
- STOLEN CHECK—  
effect of, 245.

## [REFERENCES ARE TO PAGES.]

## STOLEN INSTRUMENT—

- bank notes, 265.
- certificate of stock, 261.
- check, 409.
- in general, 176.
- liability on, 245.
- note from maker, 410.
- paper, 63n.
- rights of bona fide holder where undelivered instruments stolen and put in circulation, 176.

## STOPPAGE IN TRANSITU—

- effect of transfer of bill of lading on, 259.

## STOPPING PAYMENT—

- drawer not entitled to notice of dishonor, 610.

## STRANGER—

- acceptance by, 101.
- payment by, 101, 216.
- to paper, when may make payment, 101, 216.

## STREET IMPROVEMENT BONDS, 371.

## STRICT COMPLIANCE—

- with precise terms of act unnecessary, 399.

## STRIKING OUT—

- indorsement, effect, 126, 475, 626.
- indorsement not necessary on reacquisition, 475.
- when may be done, 126, 475.

## SUBROGATION—

- of payer supra protest to rights of party for whose honor he pays, 220, 440.
- of payee for honor, 672.
- of surety maker to rights of holder, 618.
- of surety on appeal bond of prior parties to obligation of subsequent parties, 623.
- payer for honor right, 220, 440.

## SUBSTITUTION—

- of another obligation acts as a discharge, 222.
- of another obligation, effect of, 222.
- of instruments for other pledged collateral as value, 433.

## SUCCESSIVE INDORSEMENT, 116.

## SUFFICIENCY—

- in form of notice of dishonor, 195.

## SUIT, see ACTION ON NEGOTIABLE INSTRUMENTS.

## SUM—

- certainty of, not affected by certain provisions, 52.
- to be paid, must be fixed and certain, 52.

## SUM CERTAIN, see CERTAINTY—

- what is, 376.

## SUNDAY—

- day falling on, 701.
- instrument due on, 580.



## [REFERENCES ARE TO PAGES.]

## SUNDAY—continued—

- instrument made on, 168.
- presentment for payment when instrument falls due on, 580.
- when day of maturity falls on, 580.
- when day for acts falls on, 701.
- when last day falls on Sunday, 333, 701.

## SUNDAY CONTRACT—

- as a defense, 168.

## SUPRA PROTEST, see also ACCEPTANCE SUPRA PROTEST; ACCEPTOR

## SUPRA PROTEST; PAYMENT SUPRA PROTEST—

- acceptance, 101, 667.
- acceptance for, how made, 101, 667.
- acceptance for, when may be made, 101, 667.
- acceptor, liability of, 101, 667.
- acceptor, nature of his agreement, 101, 668.
- acceptor, presentment to, how made, 101, 668.
- delay in presentment when excused, 101, 668.
- effect of payment on subsequent parties, 220, 672.
- of bill, 101, 668.
- of bill accepted, 101, 668.
- payment by two or more parties, 220, 672.
- payment declaration of intention, 220, 672.
- payment how made, 220, 672.
- payment when may be made, 220, 672.
- refusing to receive payment, effect of, 220, 672.
- rights of payer, 220, 672.
- when deemed to be for drawer, 101, 667.

## SURETIES—

- contribution between, 276.
- concealed, 272.

## SURETY—

- concealed, 272.
- contract of, 111.
- difference between and guarantor, 268.
- difference between liability of, and of guarantor, 268.
- discharge by alteration, 274.
- discharge of, 618, 619, 624.
- discharged by agreement to give time, 275.
- extension of time, 275.
- how discharged, 274.
- how differs from guarantor, 268.
- if primary party on instrument not a "secondary" party, 622.
- if maker not entitled to notice of dishonor, 587.
- liability of, 273.
- limit of recovery, 273.
- married woman as, 32, 162.
- may be joined with principal in one suit, 111.
- misrepresentation, duress, diversion, alteration, tender, etc., 274.
- on appeal bond of prior parties, whether subrogated to obligation of subsequent party, 623.
- parol evidence to show party signed, 272.
- parting with security, 275.

[REFERENCES ARE TO PAGES.]

SURETY—continued—

- plea of fraud as discharge, 274.
- plea of misrepresentation as discharge, 274.
- released by covenant not to sue, 275.
- suits by and against, 268.
- what will discharge, 274.
- whatever discharges principal debtor will discharge surety, 274.
- who are, 269.

SURETYSHIP, see also SURETY, Etc.—

- defined, 267.
- distinguished from guaranty, 267, 268.
- law of, whether recognized by act, 615, 621.
- may surety and principal be sued jointly, 268.
- surety bound with principal, 268.
- trial of, 273.

SURRENDER—

- consideration unnecessary, 220.
- compel for fraud, 80.
- discharge of instrument by must not be induced by fraud, 220.
- of instrument, to primary party as discharge, 615, 628.
- payment of bill, drawn in set without, 70.
- thinking paid, 221.
- when notice, 175.

T

TABULATED LAWS, 708, 709.

TAXATION—

- situs for, 227n.

TAXES—

- provisions, 373.

TELEGRAM—

- acceptance by, 89.

TELEGRAPH—

- acceptance by, 89.

TELEGRAPH DRAFT—

- negotiable, 641.

TELEPHONE—

- demand of payment over, 572.
- notice of dishonor, 594.
- presentment by, 572.

TENDER—

- ability and willingness to pay at place of maturity equivalent to, 188, 563.
- plea of, 351, 352.
- what is a sufficient, 188, 563.

TENDER OF PAYMENT—

- by maker, refusal of is not renunciation, 629.
- by prior party, effect on party secondarily liable, 225, 621.
- what amounts to, 188, 563.
- when having funds special place is, 563.

## [REFERENCES ARE TO PAGES.]

## TENOR—

indorsement according to, 113, 114.

## TERMS OF INSTRUMENT—

when sufficient, 399.

## THEFT—

negligence in facilitating, 632.

of completed instrument, 409.

of certified check, 488.

of incomplete instrument, 407.

## THIEF, see also STOLEN INSTRUMENT—

in general, 156, 176, 218.

## TIME—

certainty of, 369, 376, 385.

computation of, 66, 190, 582, 701.

determinable future, what constitutes, 54, 55, 385, 699.

extended, 370.

extension of, effect of, on surety's liability, 274.

of indorsement, presumption as to, 125, 473.

of negotiation, 473.

of maturity, 580, 582, 701.

of payment, blanks for, 393, 404.

of payment, alteration of, 636.

of payment, failure to express, 392.

reasonable, 99, 658.

when act takes effect, 702.

when statute to take effect, 702.

## TIME OF MATURITY—

fixed by statute, 186, 190, 580, 659.

general rule, where instrument falls due on Sunday or holiday, 701.

how computed, 186, 190, 580, 659.

## TIME OF PAYMENT, see also PAYMENT; ETC.—

after the death of a person, 54.

contingency as to, 54, 385.

determinable future, what constitutes, 54, 55, 385.

event to be one which must happen, 55, 385.

fixed period after date or sight, 55, 385, 582.

fixed period after specified event, 55, 385, 582.

in installments, does not affect negotiability, 54, 376.

instrument expressing no, 47.

negotiable instrument to be paid on demand or at fixed future time, 191, 566.

on day certain, or on happening of event, 54, 55, 385.

on demand, when payable, 191, 566.

on or before a certain date, 55.

## TIME OF PRESENTMENT, see also PRESENTMENT—

in general, 190, 580, 582.

## TIME PAPER—

laws as to days of grace tabulated by states, 406.

## [REFERENCES ARE TO PAGES.]

## TITLE—

- burden of proof, 527.
- burden of proof where title of prior party defective conveyed by operation of law, 130. .
- defect of, 501, 527.
- defect of after defendant became bound, meaning of section, notice of defect, 500, 508.
- of act, 692.
- of holder in due course, 518.
- of person negotiating, 501.
- presumed to be in holder, 149, 527.
- passes with transfer without indorsement, 476.
- through forged indorsement, 217, 218.
- transferred by blank indorsement, 129, 463.
- through holder in due course, 523.
- warranty of where negotiation by delivery, 552.
- warranty of where negotiation by qualified indorsement when defective, 150, 175, 501.
- when negotiated by fraud, 142, 501.
- whether passed by restrictive indorsement, 466.

## TORN INSTRUMENT—

- whether torn with intent, 617.

## TOWNS—

- power to execute negotiable paper, 41.

## TOWNSHIP BONDS, 383.

## TRADE ACCEPTANCES—

- by whom presented for discount, 105.
- clause, "the obligation of the acceptor hereof arises out of the purchase of goods from the drawer" necessary, 106.
- confined to credit obligations, 104.
- defined, 104.
- distinguished from bill of exchange, 104.
- distinguished from promissory note, 105.
- drawee, 104.
- drawer, 104.
- effect of Federal Reserve Act, Sec. 13, 104.
- effect on other negotiable instruments, 106.
- extent of use, 107.
- Federal Reserve Banks, as purchasers, 106.
- how accepted, 105.
- how made, 105.
- law applicable, 107.
- meaning of term, 104.
- nature of transaction in which used, 105.
- necessary clause, 106.
- negotiable two name paper, 105.
- ninety day maturity time, 106.
- origin, 106.
- payee, 104.
- purpose of, 107.
- when bargain is consummated, 105.
- where payable, 105.
- whether payable on demand, 393.

## [REFERENCES ARE TO PAGES.]

## TRADE NAME—

- liability where person signs, 49, 415.
- liability under, 49, 415.
- signature of, 49, 415.
- to designate party to instrument, 49, 415.

## TRADING PARTNERSHIPS, see also PARTNERS; Etc.—

- negotiable instrument executed by one partner binding on firm, 39.

## TRANSACTIONS—

- statement of set out, 57, 381.

## TRANSFER, see also DELIVERY; INDORSEMENT—

- by assignment, 109, 131.
- by attachment, 135, 136.
- by delivery, 128.
- by execution, 135, 136.
- by garnishment, 135, 136.
- by indorsement, 109.
- by legal process, 109, 135.
- by operation of law, 109, 130.
- negotiation by, 108.
- without indorsement, 109, 115, 130, 476.
- without indorsement—effect of, 109, 126, 476.
- without indorsement, failure of consideration as defense, 477.
- without indorsement, payment to transferor as defense, 477.
- without indorsement or after maturity, effect of defenses subsequent to transfer, 126.
- without indorsement, whether transferee is holder, 126.

## TRANSFEROR BY DELIVERY—

- of bearer instrument, liability of, 552, 561.

## TRAVELER'S CHECKS:

- advantages of, 252.
- amount of in foreign countries specified, 251.
- countersigned, 251.
- forged counter-signature, 252, 423.
- forged indorsement, 252, 423.
- holder's signature must correspond, 251.
- issued by agent, 252.
- lost, 251.
- meaning, 251.
- object, 251.
- provisions, 251.
- right of issuing party to refuse payment, 252.
- unused, 252.
- when not effective as draft, check, etc., 252.

## TREASURER—

- of corporation, power to issue bills and notes, 40.

## TREASURY NOTE—

- how differs from bank note, 265, 266.

## TRIAL—

- how prove personal defenses, 351.
- protest, 207, 208.
- statement of notary, 4.

[REFERENCES ARE TO PAGES.]

**TRIAL PROCEDURE—**

- code procedure, 347.
- common law procedure, 346.
- essentials of procedure, 346.
- evidence of defendant, 351.
- evidence of plaintiff, 348.
- impaneling the jury, 347.
- opening statements, 348.
- steps in a jury trial, 347.
- the argument, 352.
- the charge, verdict and judgment, 352.

**TRUST—**

- created by restrictive indorsement, 463.
- created in indorsee, 119, 463.
- indorsements in, effect, etc., 119, 463.
- mention of on instrument, notice of trust fund, 511.
- substituted instruments subject to, 456.

**TRUSTEES—**

- as parties to negotiable instrument, 35.
- check by, 249.
- in general, 35, 419.
- signature by, 417, 419, 472.

**TYPEWRITING—**

- considered as printing or not, 414.

**TYPEWRITTEN—**

- in general, 47.

**ULTRA VIRES—**

- accommodation indorsement by corporation is, 147.
- defense, corporation not to set up, 162.
- in general, 162.

**UNCERTAIN—**

- when agreement to look to mortgage security, 370.

**UNCERTAINTY—see CERTAINTY.****UNCONDITIONAL PROMISE OR ORDER—**

- necessary to negotiability, 54.
- not affected by certain provisions, 54, 55.
- order to pay out of particular fund is not what is, 381, 640.
- when order or promise is unconditional, 54, 56.

**UNDATED INSTRUMENT—**

- date may be inserted in, 47.

**UNDISCLOSED PRINCIPAL, see also AGENT; PRINCIPAL; Etc.—**

- agent of, 148.
- doctrine not applicable to negotiable instruments, 415, 419.
- except to cashier or fiscal officer, 471.
- liability of bank to agent, 250.

**UNIFORMITY—in construction of Act, 692, 693, 694.**

- statute construed so as to produce, 692, 693, 694.

**UNDUE INFLUENCE—**

- instrument or signature obtained by, 427.

## [REFERENCES ARE TO PAGES.]

UNIFORM NEGOTIABLE INSTRUMENTS LAW—  
where adopted, 708, 709.

UNINCORPORATED ASSOCIATION—  
as party to instrument, 396.

UNINTENTIONAL CANCELLATION—  
effect of, 221.

UNITED STATES—  
as party to negotiable instrument, 397, 543.  
treasury notes, 265.

UNITED STATES REVENUE STAMP, see STAMP.

UNLAWFUL MEANS—  
obtaining by, 150.

UNQUALIFIED INDORSER—  
liability of, 143.

UNREASONABLE TIME—  
as notice, 155.  
how determined, 333.

USAGE—  
bank custom in determining reasonable or unreasonable time, 699.

USUAL COURSE OF BUSINESS, see BUSINESS—  
statutes as to, 167.

USURY—  
as a defense, 166, 167, 168.  
compensation for trouble and expense not, 167.  
defined, 167.  
discount of paper not, 167.  
interest, 167.  
in accommodation instrument, 449.  
in general, 503.  
no implied warranty, 553.  
note given for usurious loan, 503.  
penalty for, 708, 709.

## V

VALIDITY—  
governed by *lex loci contractus*, 228.

VALUABLE CONSIDERATION, see also CONSIDERATION; VALUE—  
presumption as to, 78.  
what is, 72.

VALUATION LAWS, 3.

VALUE—  
accommodation party receives no, 448.  
antecedent debt, 72, 432.  
bank credit as, 433.  
collateral security, 152.  
credit, 152.  
defined, 72, 152, 432, 695.  
discount, 152.  
discharge of debt as, 428.  
for renewal note, 428.

## [REFERENCES ARE TO PAGES.]

**VALUE**—continued—

- holder after a holder for, 155.
- holder for, lienor is, 153, 442.
- holder for, because of lien, 442.
- holder for, under certain circumstances, 152.
- holder for, what constitutes, 83, 440.
- lien on instrument constitutes lienor, 442.
- must instrument specify, 58.
- necessity of words "given for a patent right," 58.
- negotiable instrument as, 435.
- need not be specified in instrument, 391.
- of consideration not considered, 72.
- payment of, prima facie evidence of good faith, 489.
- pre-existing debt, 72, 152, 432.
- promise to lend money as, 434.
- promise to re-pay money not, 434.
- recital for value, omission of does not affect negotiability, 79.
- substitution for other pledged collateral, 433.
- surrender of forged note not, 631.
- who holder for, 440.
- what constitutes, antecedent or pre-existing debt, 72.

**VALUE RECEIVED**—

- effect of use of words, 64, 79, 81, 427, 445.
- expression not necessary, 64.
- important on non-negotiable instrument, 79.
- in general, 64, 391.
- omission of words not material, 64, 79.
- treated as surplusage, 79.
- what indicate, 79.
- whether or not necessary, 64.

**VERBAL**—

- acceptances, 95.
- notices of dishonor, 194.

**VERDICT**, 352.**VIRTUAL ACCEPTANCE**, 649, 650.**VOID**—

- by statute, 181.
- where instrument declared void by law, good defense against bona fide holder, 168.

**VOID AND VOIDABLE INSTRUMENTS**, 161.**VOUCHER**—

- printed on draft or check, 640.

**VIOLATION**—

- of statutes, act illegal as consideration, 80, 81.

**W****WAGERS**, see **GAMBLING AND SPECULATION**.**WAIVER**—

- of protest, what it includes, 608.
- of presentment and of notice of dishonor whether mutually inclusive, 570.



## [REFERENCES ARE TO PAGES.]

## WAIVER—continued—

- of presentment for payment, 576.
- of protest, presentment and notice, effect on negotiability, 4.
- pleading, 577.
- when embodied in instrument, 607.
- when written above signature, 607.

## WAIVER OF APPRAISEMENT LAWS—

- effect of, 3.

## WAIVER OF BENEFIT OF CERTAIN LAWS—

- does not impair negotiability, effect of provision, 57.

## WAIVER OF PRESENTMENT FOR PAYMENT, see also PRESENTMENT IN GENERAL, 3, 607.

## WAIVER OF PROTEST, see also PROTEST—

- effect of, 4, 608.
- how made, 211.
- in general, 3, 608.
- who bound by, 211.
- waives also presentment and notice of dishonor, 211, 608.

## WAIVER OF NOTICE, see also NOTICE—

- of dishonor, 201, 605, 607.
- of dishonor, on whom binding, 211, 607.
- of non-payment, 3.
- of protest, 3, 4, 608.

## WAIVER OF VALUATION LAWS—

- effect of, 3.

## WAR, see also ALIEN ENEMIES—

- as excuse for non-presentment, 202.
- effect of, on intercourse, 33.

## WAREHOUSE RECEIPTS—

- attached to bill of exchange, failure to surrender, 542.
- contents of, 266.
- defined, 266.
- description and nature of, 266.
- how transferred, 266.
- whether negotiable, 266.

## WARRANTY. see also WARRANTIES—

- general indorser warrants, that instrument is genuine, 555.
- general indorser warrants, that instrument is what it purports to be, 555.
  - that he has a good title, 555.
  - that prior parties had capacity to contract, 555.
  - that instrument is valid and subsisting, 555.
- in case of instrument indorsed "for collection," 553.
- in case of public or corporate securities, 552.
- of genuineness, 553.
- of validity, 553.
- to whom warranty runs, 553.
- where negotiation by delivery, 552, 553.
- where negotiation by qualified indorsement, 552, 553.

[REFERENCES ARE TO PAGES.]

**WARRANTIES—**

- by acceptance, 89.
- by acceptance for honor, 101.
- by agent who signs for principal, 148.
- by agent who transfers, 148.
- by assignor, 133.
- by broker or other agent,
- by indorsement, 113, 553.
- by indorsement "without warranty," 467.
- by indorser for collection, 553.
- by unqualified indorsement, 555.
- upon negotiation by delivery or qualified indorsement, 552.

**WARRANTY OF SELLER—**

- where transfer by delivery, 128.
- where transfers by indorsement, 142.

**WHO MAY SUE, 481.**

**WIFE, see also COVERTURE; MARRIED WOMEN; Etc.**  
notice with, 198.

**WITH INTEREST—**

- effect of words, 3.

**"WITHOUT DEFALCATION"—**

- effect, 389.

**WITHOUT RECOURSE, see also INDORSEMENT WITHOUT RECOURSE;**

- INDORSER WITHOUT RECOURSE; SANS RECOURSE—
- in general, 121.
- indorsement, 467.
- indorser, warranties of, 143, 144.
- liability of, 143, 144.
- re-issue by maker, 616.

**WITHOUT RELIEF—**

- what show, 3.

**WITNESS—**

- adding name of, is material alteration, when, 177.
- addition of, alteration, 638.

**WITNESSES—**

- competency of parties as, 330.
- to signature by mark, 48.

**WORDS—**

- effect of "I promise to pay," 338.
- effect of "This is and shall be negotiable," 50.

**WORDS AND FIGURES—**

- discrepancy between, 338.

**WRITING—**

- acceptance must be in, 646.
- addition to printed provisions as alteration, 414.
- collateral agreements, 45, 65.
- conflict with figures, 2.
- contemporaneously, 45, 118.
- discrepancy between figures and words, 45.

[REFERENCES ARE TO PAGES.]

**WRITING—continued—**

- figures for convenience, 45.
- includes print, 45.
- manner of, not material, 46.
- may be in pencil, 46.
- meaning of, 45.
- more accurate than figures, 3.
- necessary for renunciation, unless surrender, 628.
- negotiable instrument must be in, 45.
- parol evidence to explain latent ambiguity, 45.
- renunciation must be in, 215.
- whether required for release, 628.

**WRITINGS, CONTEMPORANEOUS—**

- construed as one instrument, 45.

**WRITTEN AND PRINTED PROVISIONS—**

- conflict between, 338.
- defined, 695.
- in conflict, 338.

**"WRITTEN"—**

- includes printed and "writing" includes print, 45.

**WRITTEN NOTICE—**

- supplemented and validated by verbal, 195.

**WRITTEN PARTICULARS—**

- protest on, 204.

**WRITTEN PROVISIONS—**

- prevail over printed, if conflict, 413.

**WRONG DESIGNATION—**

- of name of payee or indorsee, 472.

























